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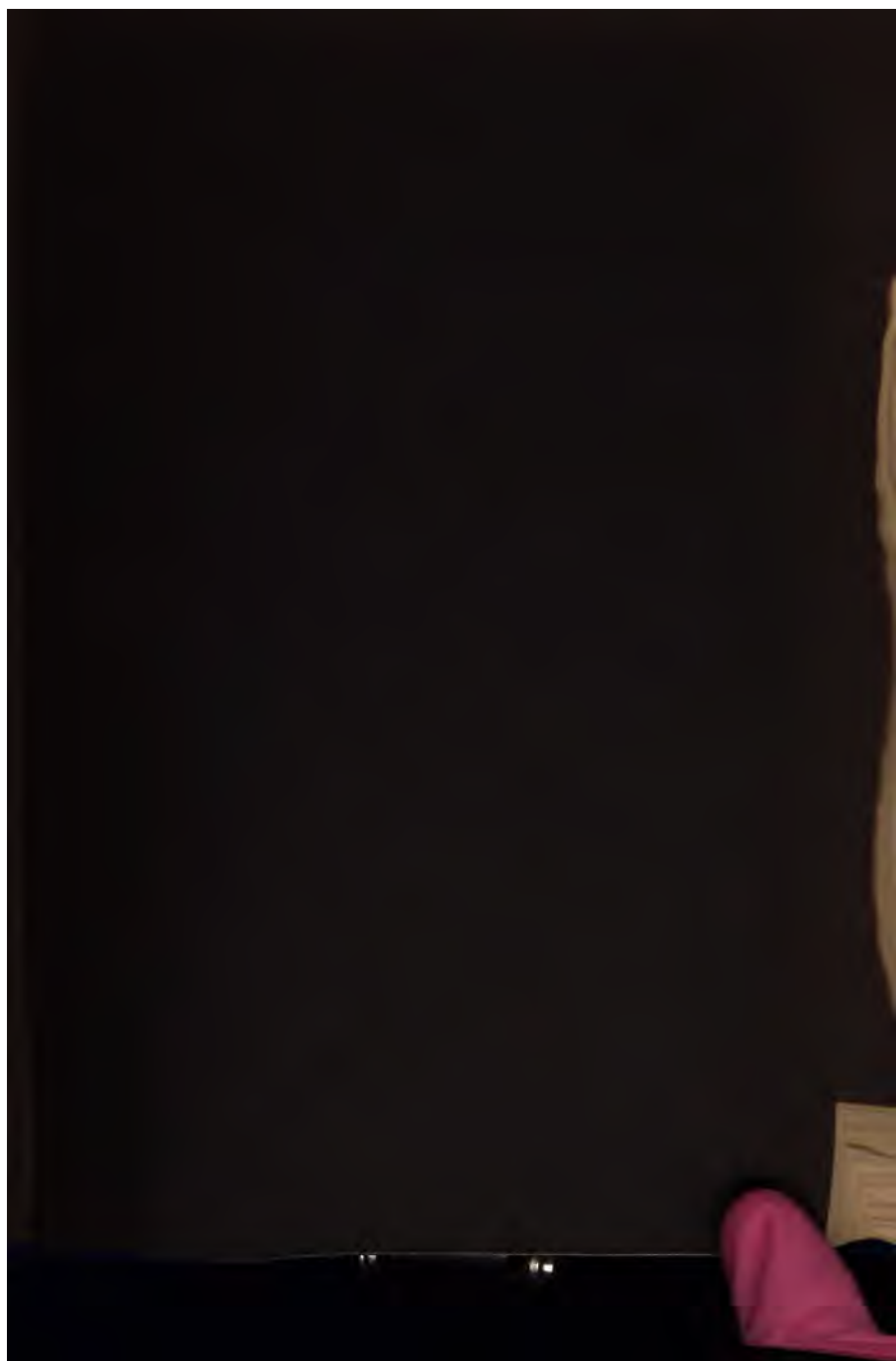
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BILLS OF LADING:

A HANDBOOK.

BY

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OF LINCOLN'S INN, BARRISTER-AT-LAW,

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WITH AN APPENDIX OF STATUTES AND

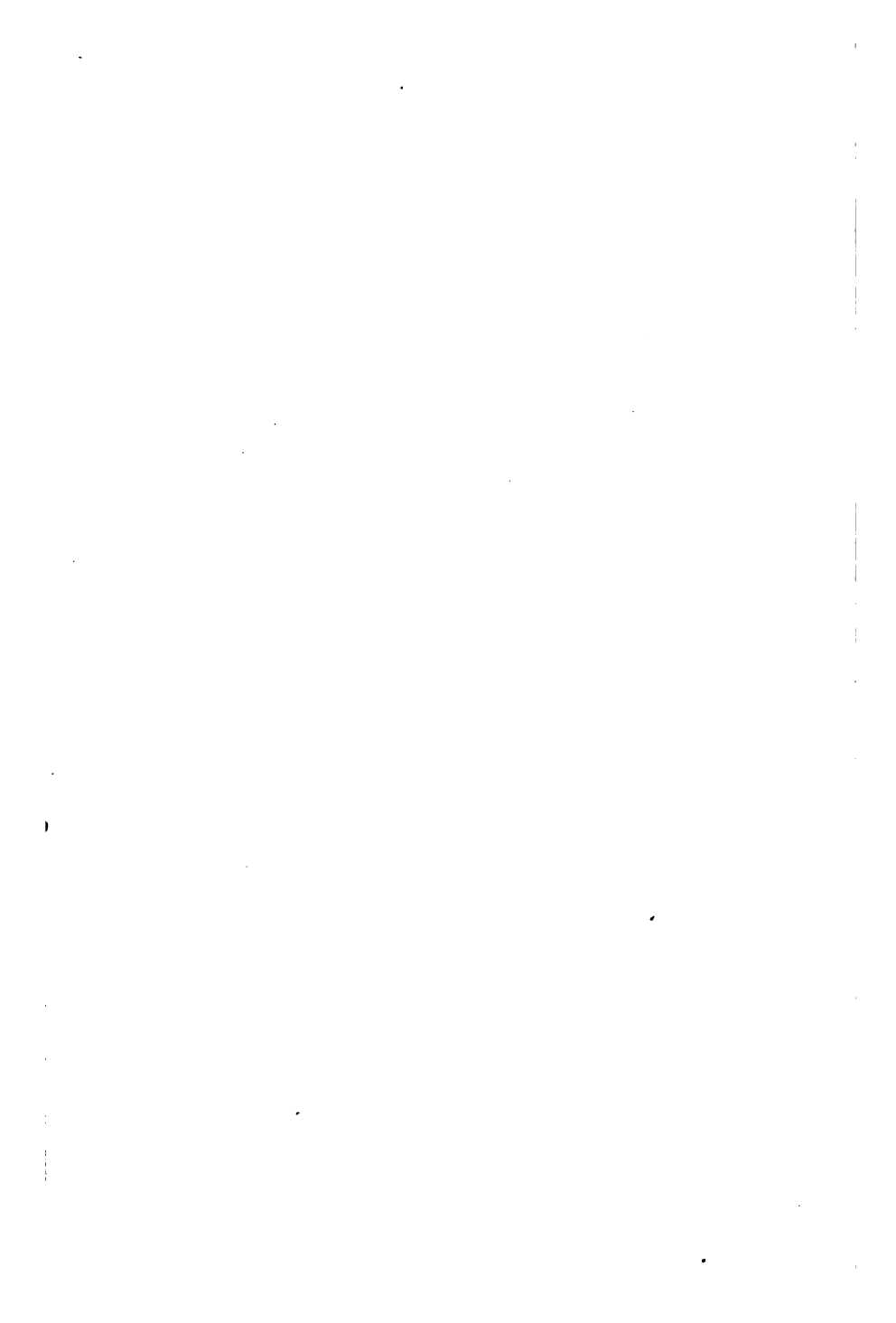


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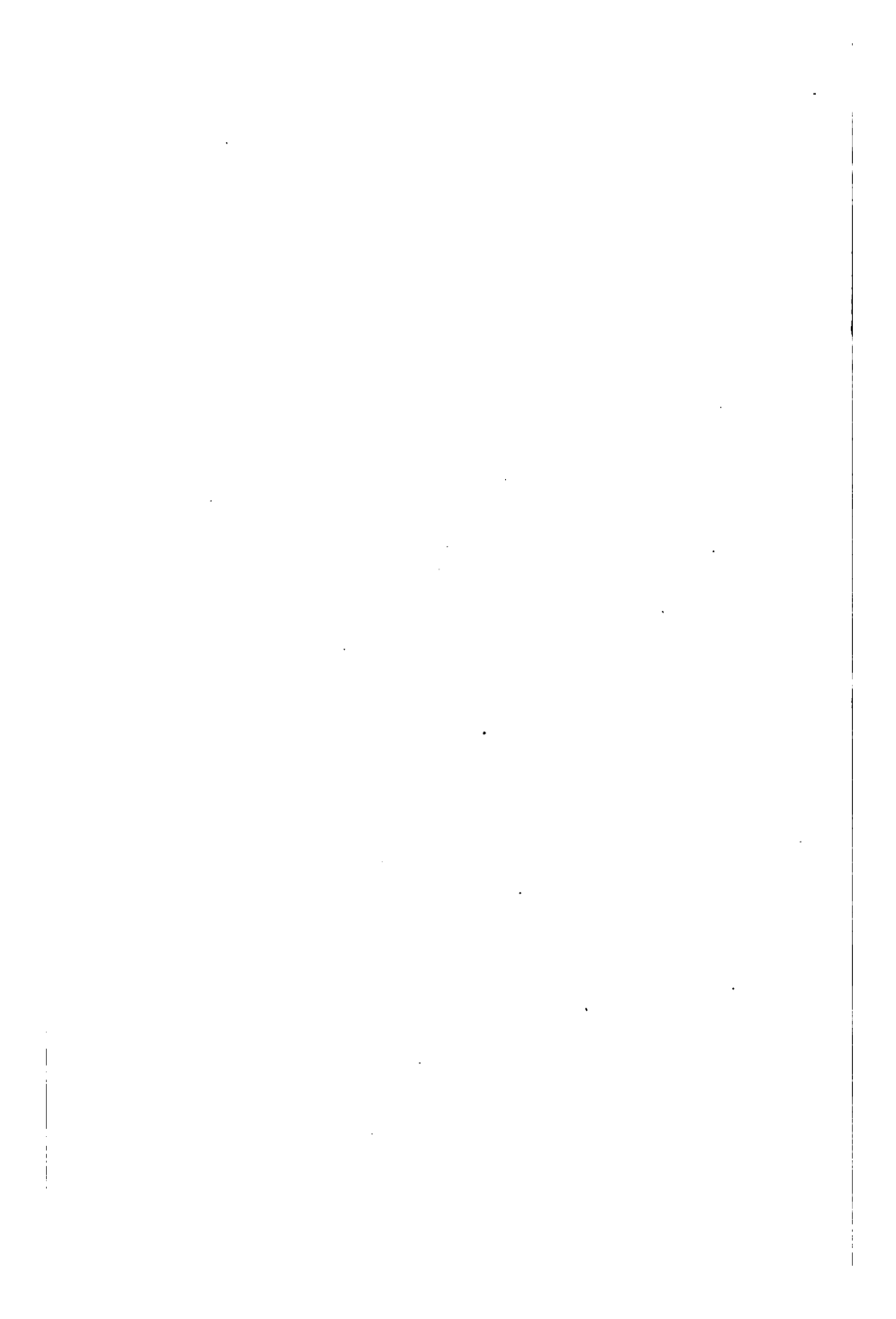
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1881.



INTRODUCTION.

BILLS OF LADING as a separate subject have not hitherto been treated by any writer. No work on mercantile or shipping law is complete without a section devoted to this subject, which, in fact, is adequately recognized in all the standard law books. But as legal volumes swell their bulk, and particular sections grow in peculiar importance, it becomes necessary from time to time to take out a portion of the general matter, and by treating it in a separate form, both to make the knowledge of it more accessible and to give to the subject the independent place to which it has established a claim. In these days of extended commerce and keen competition, there arise, with respect to bills of lading, a multitude of questions whose answers must be sought in such exhaustive store-houses of learning as Maclachlan's Merchant Shipping, Smith's Mercantile Law, Maude and Pollock on Merchant Shipping, &c. It would be presumptuous to suggest that the following few pages could take the place of those excellent text books, even in a small section of the matters with which they deal. But there is obvious convenience in small and handy books where unprofessional people can find what they want to know without the research or even the physical labour which the fat modern text-book requires ; and the only claim which this treatise makes, is that it deals with the law concerning bills of lading in the shortest way consistent with accuracy.



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BILLS OF LADING.

SECTION I.

BILLS OF LADING GENERALLY.

1. *The Bill of Lading: What it is.*—When goods are laden on board ship to be carried by sea to the place for which they are destined, it is the practice in the British carrying trade for the shipper to receive from the carrier a bill of lading.

The following is a bill of lading in its most simple form:

‘*Shipped* in good order and condition by A B of X on board the good ship (or steamship) M, whereof is master for this present voyage C D, now lying in the Port of Y and bound for Z.

(*Goods*).

being marked and numbered as in the margin, and to be delivered in the like good order and condition at the aforesaid Z, unto E F (or order) or to his (or their) assigns on payment of freight as per margin.

Marks and Numbers.
Measuring tons x at £ y per ton

‘*In witness* whereof the master of the said ship hath affirmed to N bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

‘Dated in Y, the day of 188 .’

The greater part of a bill of lading is usually in print and the necessary insertions and

additions are made either in writing or by stamping at the time of shipment. In practice a great variety of printed forms are used, many shipping companies and firms of shipowners having printed forms of their own. In some trades, too, particular bills of lading are habitually used, containing special clauses framed to meet the different emergencies which experience has shown to be likely to arise ; and for convenience a comprehensive form for a bill of lading has been drawn up, which will be found in the Appendix, at page 132.

The principal properties which the law and mercantile custom have attached to a bill of lading are—

Firstly—It is an acknowledgment by the master of the ship that the goods named in it have been received on board. The exact extent to which this acknowledgment binds the different parties to the instrument is discussed later on page 9, *et seq.*

Secondly—It is a document of title, or symbol of the goods named in it, and represents them while they are at sea, so that by means of the bill of lading, the goods which it represents may be sold or pledged.

Thirdly—It contains a memorandum of a contract, or some of the terms of a contract, between the shipper and the shipowner to carry

the goods which it represents to their destination and deliver them there, the rights and liabilities under which contract are transferable to each successive holder of the instrument.

2. *Sets of Bills of Lading.*—A bill of lading is, according to present commercial practice, invariably drawn in sets: that is to say, it consists of three, four, or even six identical parts. Of these, in the ordinary course of business one is retained by the master. Of the others one is sent by the shipper to the consignee; the rest are reserved for various purposes. For instance, a second is often sent to the consignee by a later post, in case of the first not reaching its destination; and others are found useful in various ways. The entire set of parts form only one bill of lading. In simple cases when one part is presented to the master of the ship at the port of delivery, and the cargo delivered under it, the remaining parts become simply void instruments; but if during the transit of the cargo the parts become separated and get into the hands of *bona fide* holders, questions of difficulty sometimes arise as to the title to the goods which the bill of lading represents. (See p. 22).

3. *Stamps.*—The law as to stamping a bill of lading is as follows:—

Every bill of lading for goods, merchandise,

or effects, to be exported or carried coastwise, should bear a sixpenny stamp ; which is not to be affixed after execution. The penalty on any person making or executing a bill of lading not duly stamped is £50. (33 & 34, Vic., c. 97, s. 56, and Schedule, "Bill of Lading").

Each part of the bill of lading which the captain or agent signs should bear the stamp.

Any part of the bill of lading which is not required for future dealings with the property, but is only kept unsigned by the captain or any other person as a memorandum of the shipment, need not be stamped. (See page 21 as to an unstamped bill of lading).

SECTION II.

SHIPMENT OF CARGO.

4. *Shipment of the Goods: Mate's receipt.*—

The shipment of goods may be considered to begin as soon as any portion of them has been delivered to the ship's mate, either actually on board or upon the quay. The mate is bound (if required) to give for each delivery a receipt, which acts as an acknowledgment of the shipowner that so much of the goods are under his care, and makes him liable for any damage or accident affecting them either on the quay or before stowage, unless any agreement to the contrary subsists, or unless it be stated on the face of the receipt at whose risk the goods are held. Sometimes, however, goods are delivered to dock companies on account of shipowners, and the companies' receipt is accepted in place of the mate's.

5. *Who entitled to have the Bill of Lading.*—

When the whole amount of a shipment has been delivered and corresponding receipts obtained, the shipper should as soon as possible present the receipt to the master of the vessel, who should hand him a bill of lading in exchange. The holder of the mate's receipt is the only

person entitled to demand a bill of lading, and he possesses the sole control over the goods till he has exchanged the receipt for the bill of lading (*Craven v. Ryder*, 6 Taunton's Reports, 435).

If the master delivers bills of lading to the wrong person, he renders himself liable to be sued by the holder of the mate's receipt. The mate's receipt is not a negotiable instrument, nor can it be made negotiable by any local custom (*Hathesing v. Laing*, L. R., 17 Eq. 92; 43 L. J. Chanc. 233).

6. *When to be signed.*—A bill of lading is signed generally by the master of the ship in which the goods are to be carried, but in some cases the signature is given by a part owner or by an agent of the shipowner, but in all cases the person who manually signs a bill of lading is responsible to the holder of it (*Jessel v. Bath*, L. R. 2 Exch. 267, 36 L. J. Exch. 149). Each part of a bill of lading must have a separate signature.

The signature to a bill of lading should be obtained as soon as the mate's receipt for all the goods referred to in it can be presented in exchange. The signature is an acknowledgment by the signer that the goods are on board the ship, and therefore a bill of lading should not be signed until that fact has been ascertained; but as soon as the mate's receipt is presented to

the master or agent of the shipowner, he should sign a bill of lading in favour of the holder, unless he has notice that the receipt is not in the right hands. There is, however, no obligation to require the production of a mate's receipt, which is in fact not used in some trades, and the bill of lading may safely be signed in favour of the person entitled to have it, even in the absence of the strong evidence of the mate's receipt.

7. Right to the possession of the Bill of Lading.

—After it has been signed, the bill of lading becomes the property of the shipper. If, however, there be any prior agreement—as for instance that half the freight shall be prepaid—the bill of lading may be detained by the master or agent till the condition is fulfilled.

When once a bill of lading has been signed, the master cannot be required to sign any other for the same shipment, except upon delivery of the original document, and the offer of an indemnity, since the holder of the first bill of lading is entitled to the goods, and the master would deliver them at his peril to the holder of any subsequent document (*Tindall v. Taylor*, 4 E. & B. 219; 24 L. J. Q. B. 12; *Davidson v. Gwynne*, 12 East 381. *Hubbersty v. Ward* 8 Exch. 330: 22 L. J. Exch. 113).

8. Refusal to give Bills of Lading.—The master

cannot be compelled to sign a bill of lading ; but if he refuses, the shipper is entitled to have his goods put back on shore at the ship's expense (*Peek v. Larsen*, L.R. 12 Eq. 378 : 40 L. J. Chanc. 763).

In cases in which the master is bound by a charter-party to sign bills of lading incorporating certain of its terms, he has a right to refuse to sign a bill of lading in any different terms, nor would the ship be liable to pay the expense of unloading goods withdrawn under such circumstances.

If a master or agent bound under a charter-party to sign bills of lading after receiving cargo on board were to refuse to sign a bill of lading when it was his duty to do so, he would run a serious risk of having an action brought against him.

The bill of lading being the only means by which the shipper of the cargo can deal with it, whilst it is at sea he (the shipper) might be seriously prejudiced by being deprived of it ; and for any damage which he suffered in consequence he would have a legal remedy against the person at fault (*Jones v. Hough*, 5 Exch. D. p. 115 ; 49 L. J. Exch. 211).

Although a bill of lading be not signed, but the goods are carried to their destination, the master is entitled to be paid his freight (viz. at

the scale mentioned in the incomplete bill of lading) and to detain the goods until payment. The shipper, on the other hand, is entitled to delivery of the goods to himself or his agent, on tendering the amount of the freight, and the master or shipowner is liable on refusal to be sued for their value.

9. *Effect of signature where no goods were shipped.*—If the master signs a bill of lading when the goods to which it refers were never in fact delivered to him or his mate, the shipowner is not bound by his signature, nor is he liable to the holder of the bill of lading (*McLean v. Fleming*, L. R. 2 Sc. App. 128: *Grant v. Norway* 10 C. B. 665).

Such a case would be one of misrepresentation by the master, for the consequences of which he would be individually liable (Buller J. in *Lickbarrow v. Mason*, 2 T. R. p. 75.)

On the other hand, the master's signature binds the shipowner where the goods have been received by the mate, though they have not actually been put on board the ship (*British Columbia Saw Mills Co. v. Nettleship*, L. R. 3 C. P. 499: 37 L. J. C. P. 235).

10. *Description of the Goods.*—The description of the goods on the face of the document is binding upon both the signer and the holder of a bill of lading, as an admission of both the

quantity and quality of the shipment. With a view to protecting consignees and holders of bills of lading against disputes on this subject, at the port of discharge, the Bills of Lading Act, 1855, 18 & 19 Vic. c. 111, provides (s. 3):

‘Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment, as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board.’

With the proviso

‘That the master or other person so signing may exonerate himself in respect of such misrepresentation, by shewing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.’

These provisions have been construed strictly so as not to extend to any one except the master or agent who actually signs (*Fessel v. Bath*, L. R. 2 Exch. 267 ; 36 L. J. Exch. 149).

Where the master or agent has signed a bill of lading for a greater quantity of goods than have in fact been shipped, the shipowner who has not signed the document is not liable to

account for more than the amount of the actual shipment, but the burden of proof will be thrown upon him afterwards of showing that he has delivered to the holder of the bill of lading the same quantity as he received (*McLean v. Fleming*, L. R., 2 Sc., Ap. 128; *Brown v. Powell Duffryn*, L. R. 10 C. P. 562; 44 L. J. C. P. 289).

11. *Weight, contents, &c., unknown.*—It is very important that in all cases where the person who signs the bill of lading cannot test the weight, measurement, description, &c., of the goods which it represents, he should, if possible, protect himself by some notice on the face of the bill of lading, that he is not responsible for anything other than what has been actually shipped.

For this purpose, such words as 'weight, measure, quality, contents, and value unknown,' written, printed, or stamped, on the bill of lading are sufficient, and override any description of quantity or quality in the bill of lading itself. On the other hand, these words make the shipowner liable to account at the port of discharge, not merely in terms of his bill of lading, but in respect of the very goods which were in fact put on board his ship (*Lebeau v. General Steam Navigation Company*, L. R. 8 C. P. 88; 42 L. J. C. P. 1).

Such words do not in any way override or qualify the admission which is involved in the signature of the bill of lading as to the condition in which the goods named in it were shipped. If by the bill of lading the goods are admitted to be 'shipped in good condition' they must be accounted for as such, and the words, 'weight, contents, and value unknown,' will afford no protection to the shipowner in the event of the goods turning out damaged on delivery. (*The 'Peter der Grosse,'* 1 Prob. D. 414).

Such words, moreover, have no effect on any stipulations as to freight which the bill of lading may contain. Thus, in a case where the bill of lading of a grain cargo stipulated that freight was to be paid on the invoice quantity taken on board, it was held that the addition of the words 'quantity and quality unknown' did not alter in any way the effect of such a stipulation (*Tully v. Terry*, L. R. 8 C. P. 679; 42 L. J. C. P. 240).

A protest signed before a notary or consul is another mode of protecting the shipowner from the burden of proof which may be thrown on him to show whether or not the shipment is accurately represented in the bill of lading. But this protection would seldom extend to the person who manually signs the bill of lading, since he would have to show that the protest

came to the knowledge of the holder, however often the document may have been negotiated (See per Lord Chelmsford in *M'Lean v. Fleming*, L. R. 2 Sc. App. 128).

12. *Dangerous, &c., Cargo.*—Dangerous goods—that is to say, vitriol, gunpowder, lucifer matches, petroleum, &c., are the subject of special provisions in the Merchant Shipping Act, 1873.

Each package must be distinctly marked, and notice of its contents must be given to the master under penalty of not more than £100 where the omission is made knowingly, and of not more than £10 where made unknowingly. A shipment of dangerous goods under a false description is subject to a penalty of not more than £500, and the master of a ship not only may refuse to carry any package which he suspects of containing such goods, and may require it to be opened for the purpose of satisfying himself, but also may, without incurring any liability, throw overboard any package not properly marked in which he may have discovered dangerous contents. Moreover, cargo sent in contravention of these regulations is liable to forfeiture in any court having Admiralty jurisdiction.

Gold, silver, diamonds, watches, jewels, and precious stones should not be shipped without

the shipper inserting in the bills of lading a statement describing their nature and value. In the absence of such a statement the ship-owner will not be liable to account for the gold, &c., in the event of a robbery on board. (See 17 & 18 Vict. c. 104 s. 503, sub-s. 2).

It is not uncommon for bills of lading to contain clauses expressly calling the attention of the shipper to the effect of these statutory provisions. (See Appendix of Forms, p. 136).

SECTION III.

DUTIES OF SHIPOWNER AND MASTER BEFORE COMMENCING THE VOYAGE.

13. *Stowage of Cargo : Stevedore.*—The stowage of the goods shipped for transportation is, in the absence of any agreement or custom to the contrary, the duty of the master of the ship on the part of the owner. In practice, however, it is usually managed by a person specially employed to stow cargoes, named a stevedore. In simple cases of ships engaged in the general carrying trade, the stevedore is the servant of the shipowner, who is responsible for the careful stowage of the cargo entrusted to him. Sometimes, however, the employment of a stevedore is made the subject of express stipulation between the shipper of cargo and the shipowner. (*Blaikie v. Stembridge*, 28 L. J. C. P. 330).

14. *Loading Tackle and Dunnage.*—The master must, in the absence of stipulations to the contrary, provide ropes and other tackle for loading the cargo. It is also his duty to supply dunnage (pieces of wood, mats, or other materials placed against the sides and bottom of the hold to keep the cargo dry from bilge water) ; but if he chooses, the shipowner can, if he has merchandise to carry,

use it instead of dunnage (Maclachlan on Merchant Shipping, p. 386).

15. *Seaworthiness of Ships*.—The ship must be seaworthy when she starts on her voyage. The shipowner who receives goods under a bill of lading in the ordinary form is considered by the law to warrant that his ship is seaworthy for the adventure on which she is about to start; that is to say, the shipowner is considered to make an 'engagement that the ship on which the goods are placed is at the time of its departure reasonably fit for accomplishing the venture which the shipowner has engaged to perform' (Lord Cairns in *Steel v. State Line Steamship Company*, 3 App. Cases, 76: *Cohn v. Davidson*, 2 Q. B. D., 455; 46 L. J. Q. B., 305).

The essential elements in this implied undertaking of the shipowner include the materials of which the ship is made, its construction, the qualifications of the master, the number and description of the crew, the tackle, and equipment generally. The ship's papers, too, must be regular, and if the ship is engaged in the foreign trade it is necessary for the master to have on board all papers and documents for the manifestation and protection of the ship and cargo, in accordance with the law of the countries from and to which the ship is bound, and in accordance with existing treaty stipulations

between particular States (Crump on Marine Insurance, p. 331: Maclachlan on Merchant Shipping, p. 389).

This duty of having the ship seaworthy *when she starts on her voyage* is incumbent on the shipowner and master, who receive goods on board under a bill of lading in the ordinary form. But a shipowner might, if he pleased, expressly contract himself out of his obligation if he could obtain the assent of the shipper to such a contract. There is no law to prevent the making of a contract by which the shipowner should not be responsible, though his ship was ever so unseaworthy; but if a clause in a bill of lading by which the shipowner was to be free from the consequences of carrying the goods in an unseaworthy ship came to be disputed in a court of justice, both the circumstances under which it was inserted in the bill of lading, and its wording, would be very rigorously tested. (See Lord Blackburn's judgment in *Steel v. State Line Steamship Company*, 3 App. Cases, p. 81).

16. *Manifest of Cargo*.—When goods are shipped for export from the United Kingdom, it is obligatory on the master or owner of the ship, by himself or his agent, within six days after the final clearance of the ship, to deliver to the proper officer of Customs either a manifest of

all the goods shipped, containing the marks and numbers and the number and description of the packages, with the names of the consignees thereof according to the bills of lading relating thereto, with a declaration that such manifest contains a true account of all the cargo of the ship, or a specification comprising all such particulars with a like declaration. (See s. 111 of the Customs Act of 1876, set out in the Appendix, p. 118.) The statute contains several other important provisions relating to exportation. (See ss. 104-116).

SECTION IV.

THE BILL OF LADING AS A MEANS OF DEALING WITH GOODS DURING TRANSIT.

17. *Bill of Lading the Symbol of the Goods : Indorsement.*—The bill of lading is, in the hands of the person who has the right to dispose of the goods named in it, the symbol of those goods during their transit; and by means of the bill of lading the property in the goods may, during the transit, be dealt with as freely as if the goods were in the actual possession of their owner.

The manner by which the person who has the right to dispose of the goods is in general enabled to deal with them is by indorsing the bill of lading. If the goods are, by the bill of lading, made deliverable 'to order' or 'to assigns,' then the shipper, by indorsing his name on the back of it, can transfer the goods to whomsoever he delivers the bill of lading. If by the bill of lading the goods are deliverable to a consignee mentioned by name, 'or assigns,' then that consignee can by indorsement in the same way deal with the goods. So, also, a bill of lading may be specially indorsed in favour of a particular person; but a bill of lading is

not negotiable by indorsement unless it contains some such words as 'to order,' or 'to assigns' (*Henderson v. Comptoir d'Escompte*, L. R., 5 P. C. 253 ; 42 L. J. P. C. 60).

18. *Indorsee's Title to the Goods.*—It by no means follows that every person who has the manual possession of a bill of lading has the right to dispose of the goods of which it is the document of title. The negotiability of a bill of lading is not so complete as that of a bill of exchange, for the indorsee or transferee of a bill of lading acquires no better title to the goods which it represents than the person had from whom he received it. If, therefore, a transferor has no title, or only a qualified title, to the goods represented in the bill of lading, the transferee acquires no better title to them than the transferor had.

For instance, where a bill of lading and a bill of exchange to cover the goods represented by the bill of lading are sent in a letter to a buyer of the goods, the bill of lading cannot be retained unless the bill of exchange is accepted. If the bill of exchange be not accepted, but the bill of lading be nevertheless retained, the bill of lading acquired in such a manner would give the holder no right to demand the goods on their arrival (*Shepherd v. Harrison*, L. R. 5 H. of L. 116 ; 40 L. J. Q. B., 148).

19. *Indorsement of Unstamped Bill of Lading.*—It has never been formally decided what the effect of the indorsement and transfer of an unstamped bill of lading would be on the rights of the person to whom it was transferred, and it is conceivable that difficult questions might arise, in the event of parts of a bill of lading becoming separated, as to the rights of the holders of stamped and unstamped parts. An unstamped bill of lading cannot be given in evidence in a legal proceeding even on payment of a penalty, but in cases in which this difficulty could be got over it is probable that the negotiation to a *bond-fide* purchaser of a bill of lading unstamped would be upheld in a court of justice (See *Moakes v. Nicholson*, 19 C. B. N. S., on p. 300; 34 L. J. C. P., on p. 274).

20. *Duration of Bill of Lading as a Document of Title.*—The life of a bill of lading, that is to say its duration as a living document, by which the goods which it represents can be pledged or sold, continues until the engagement of the shipowner has been completely fulfilled, that is until the master's part and the holder's part become reunited and a delivery of the goods made to the holder. The goods may, after arrival, have been landed at a sufferance wharf, or given by the master into the custody of a wharfinger. In such cases the bill of

lading continues to be a symbol of the property until, by the presentation of the bill of lading and the fulfilment of the conditions prescribed in it, it has become accomplished (*Barber v. Meyerstein*, L. R. 4 H. of L. 317 ; 39 L. J. C. P. 187 ; per Lord Hatherley).

21. *Separation of the Parts.*—The parts of a bill of lading may sometimes become separated. Thus, while the ship is at sea one part may be assigned to the person for whom the goods are intended, a second part may be fraudulently, or perhaps accidentally, assigned to a second person, and a third part may be assigned to a third person. In such cases there is no race for the goods between the parties who have received the different parts. The person who first gets one or more parts, gets the property which the bill of lading represents. He need not do any act to assert his priority of title, which the transfer of the part itself renders complete. If there are subsequent dealings with other parts of the set, the persons who take them must submit to the loss which results from their having been deceived (Judgment of Lord Hatherley in *Barber v. Meyerstein*, *supra* ; *Gilbert v. Guignon*, L. R. 8 Chanc. 16).

22. *Responsibility for Delivery to Wrong Holder.*—The legal position of the master of the ship, or the person in whose hands goods

may have been placed by the master for delivery to the consignees, where the parts of a set have got into the hands of different holders, has been the subject of considerable argument among mercantile lawyers. It was at one time laid down generally that in cases in which the parts of a bill of lading had been indorsed to different persons, the master of the ship was justified in delivering the goods represented by the bill of lading to the first person who should present one of the parts,—unless the master was aware that the part which carried with it the right to the goods was in other hands. In favour of this proposition it was said that there would be hardship if it were not so, for the master would then be compelled to decide upon conflicting claims without any means of deciding which was best founded; and moreover it was said that by the very terms of the bill of lading, upon the presentation of any one part of a set the whole bill of lading became *accomplished* and all the other parts became *void*. In an early case it is reported that a mercantile usage, by which the master had a right to deliver to whichever holder of one of the parts he thought proper was proved, and that the judge who tried the case directed a verdict in accordance with the usage; and this case has been cited subsequently, with approval, in a judgment of

Dr. Lushington's in the Admiralty Court (*Fearon v. Bower*, 1 Smith L. C., 7th edition, p. 785; *The 'Tigress'*, 32 L. J., P. M. & A 97).

This question was very fully considered in a late case involving the liability, not of the shipowner or master, but of a dock company in whose hands goods had been placed by the master for delivery to the holders of the bills of lading. Goods had been, it appeared, consigned to a firm of merchants in London under bills of lading, making the goods deliverable to the merchants 'or their assigns.' The bills of lading were in sets of three, and each part of a set was marked conspicuously 'first,' 'second,' and 'third.' The parts marked 'first' the merchants indorsed and transferred, while the goods were at sea, to a firm of bankers as security for an advance of money. On the arrival of the ship in London the goods were landed and placed by the master in the custody of a dock company with directions that the goods should be detained until the freight was paid, and then delivered 'to the holders of the bills of lading.' The merchants shortly afterwards lodged with the dock company the parts of the bills of lading marked 'second,' and their names were accordingly entered in the dock company's books as the persons to whom, or to whose order, delivery of the goods was to be made on removal of the

stop order for freight. Subsequently, the stop for freight having been removed, the goods were delivered by the dock company to various parties on delivery orders signed by the merchants. The dock company were all this time unaware of the original pledge of the 'first' of the bills of lading to the bankers, who also were unaware that the goods pledged to them had been obtained from the dock company by others. Upon its becoming necessary for the bankers to realise their security, they applied to the dock company for the goods, and then for the first time discovered the dealings which had taken place, and thereupon they claimed the goods from the dock company, and subsequently brought an action to recover their value.

The judge who tried the case in the High Court of Justice, decided in favour of the bankers (*Glyn, Mills & Co. v. East & West India Docks Co.*, 5 Q. B. D. 129; 49 L. J. Q. B. 303).

The case was subsequently taken to the Court of Appeal, where the decision of the court below was reversed by a majority of two of the lords justices to one, and judgment was given for the dock company. The Lords Justices Bramwell and Baggallay were in favour of the dock company, while Lord Justice Brett

was in favour of the bankers (50 L. J. Q. B. 62).

Although in the judgments given in this remarkable case the general principles which should govern the rights of parties in similar transactions were minutely discussed, it is impossible, owing to the conspicuous divergence of judicial opinion which has been expressed, to consider the law at present as really settled.

On the one hand, Lord Justice Brett and Mr. Justice Field have stated their opinion to be that warehousemen and other custodians with whom goods are placed for delivery are *not* in general discharged from responsibility by a delivery to any holder of a part of a set. The warehouseman is bound to deliver to the holder of the part who has the right to the goods, and is liable to an action by him if he delivers to any other holder. Moreover, in the opinion of the same two judges this rule applies to the master or shipowner as well as the warehouseman, and the arguments to the contrary, based on mercantile convenience, ought not to prevail. 'If it were held to be different,' said Mr. Justice Field in his judgment, 'the consignee who had sold or dealt with goods to arrive, would only have to avail himself of his almost necessary earlier knowledge of the arrival of the goods to

anticipate by production of his bill of lading any production by the indorsee of the original previously indorsed, and thus most seriously affect the transaction of any such dealings, which are effected solely in reliance upon the shipping document.' (See 49 L. J., Q. B., p. 307).

On the other hand, Lord Justice Baggallay decided the case on the broad ground that an innocent delivery to the first person who presents a part of a set discharges from responsibility the custodian, whether he is the master of the ship or a warehouseman. Lord Justice Bramwell, too, expressed an opinion that this was the right view of the law, though his decision in favour of the dock company was based on the narrower ground that the transaction between the merchants and the bankers amounted to no more than a pledge of the goods, which did not take away from the merchants the right to claim delivery from the dock company.

The practical result of these discussions is that, on the one hand, masters, warehousemen, dock companies, and other persons charged with the delivery of goods under bills of lading, should if possible either satisfy themselves that the person who presents the bill of lading has the right to claim the goods, or, in cases of doubt or risk, obtain an indemnity from the

holder to whom delivery is given. On the other hand, persons who make advances on bills of lading, taking as security one part of a set only, should (where they are able to do so) lose no time in giving notice of their rights over the goods to the master of the ship or to the warehouseman or dock company in whose custody the goods may have been placed for delivery.

23. *Pledge of Bill of Lading: Factors' Acts.*—The bill of lading when in the hands of the real owner of the goods, of which it is the symbol, having been considered, it remains to consider it when in the hands of another class of persons, viz., the factor or other agent entrusted with the bill of lading by the owner of the goods for the purpose of obtaining them on their arrival and disposing of them. Several Acts of Parliament have been passed with the object of protecting within proper limits persons who honestly advance money to factors and other agents on the security of merchandise or documents representing merchandise in their hands. These statutes are generally referred to as the Factors' Acts, and are the 4 Geo. IV. c. 83; 6 Geo. IV. c. 94; 5 & 6 Vict. c. 39; 40 & 41 Vict. c. 39. A discussion of their provisions belongs properly to a treatise on sale; but inasmuch as bills of lading are documents of title, upon the security of which advances are very commonly made by

bankers, it will be useful to give shortly the effect of the law as it at present stands. For a full discussion of this branch of the law, reference should be made to Benjamin on Sales, chap. ii. p. 14 ; the judgments in *Cole v. North Western Bank*, L. R., 9 C. P., 470, and 10 C. P. 354 ; 43 L. J. C. P., 194 ; 44 L. J. C. P., 233 ; and the judgments in *Johnson v. Credit Lyonnais*, 3 C. P. D., 32 ; 47 L. J. C. P., 241.

According to the ordinary principles of law, the person who is entrusted with a bill of lading for the purpose of disposing of the goods mentioned in it has no property in those goods. If, then, he pledges the bill of lading as security for an advance of money, the person who advanced the money and took the bill of lading in pledge would not, according to ordinary principles, have any right to retain the bill of lading. Thus, but for the provisions of the Factors' Acts, those who advance money, however innocently, on the security of bills of lading might find their security at any time defeated by the claims of the true owners of the goods.

The Factors' Acts provide—

Firstly—That any factor or commission merchant entrusted with the possession of a bill of lading is to be deemed to be the true owner of the goods which it represents, so far as to give validity to sales and pledges made by him,

provided the transaction is one done in the ordinary course of business.

Secondly—The protection only extends to advances made to factors and commission agents, and does not extend to advances made to persons to whose employment a power of sale of the particular kind of goods pledged is not ordinarily incident.

Thirdly—When a factor has pledged the bill of lading, the true owner can still claim the goods if he can shew that the bill of lading was only delivered to the factor for the purpose of having the goods stored, and not for the purpose of sale.

Fourthly—The sale or pledge made by a factor holds good, notwithstanding that the true owner revoked the agency of the factor before the pledge,—unless the person who took the document had notice of the revocation.

Fifthly—In the case of a sale of the goods represented by the bill of lading, the person, be he the vendor or the vendee, who has possession of the bill of lading, can in general, notwithstanding the sale, make a valid pledge of the goods. The exceptions are that if the vendor of the goods, after the sale, pledges the bill of lading, the pledge must be to someone who did not know that the goods were already sold. If the person who takes the bill of lading in pledge

has notice that the goods had been already sold he cannot maintain his right to them. The other exception is in the case of the vendee of the goods having the possession of the bill of lading, but the goods themselves being still in the possession of the vendor under some unsatisfied right or lien over them. In such a case, if the person who takes the goods in pledge has notice of the lien or right, he cannot maintain his pledge as against the right of the vendor.

The substantial effect of the law as it at present stands is as follows :—

Bankers and financial houses may with perfect safety make advances to commission agents and other persons to whose employment a power of sale is ordinarily incident on bills of lading in their hands, provided the advances are regular mercantile transactions, in the trade in which the commission agent ordinarily has such a power of sale; they may also safely advance on bills of lading in the hands of merchants without danger of being afterwards met by the claim of some person to whom, without their knowing it, the goods which the bill of lading represents have been previously sold.

The risk which bankers and others who make advances on bills of lading seem to run

now is, that the factor or commission merchant may have the bill of lading in his possession merely for the purpose of obtaining the goods which the bill of lading represents on behalf of the true owner.

24. *Stoppage in Transitu.* — Stoppage in transitu, or the right of a seller to reclaim his goods while on their way between his possession and that of a buyer, is a subject belonging properly to a general work on sale, but it is important to state the law so far as it relates to bills of lading which may be roughly said to deal with the period of transit.

The right arises under the conditions both that the seller has been unpaid, and that the buyer has become insolvent, and can be exercised at any time after the seller has parted with, and before the buyer has acquired, actual or constructive possession of the goods.

But where goods are consigned under a bill of lading, and an insolvent buyer transfers the bill of lading to a third person, who takes it *bona fide* for valuable consideration, the original seller's right of stoppage is divested (*Lickbarrow v. Mason*, 2 T. R., 63 ; 6 East, 21 ; 1 Smith L.C., 7th edition, 657).

It is essential that the transferee of the bill of lading should be unaware that the person from whom he receives the bill of lading is insolvent,

otherwise the right of the original seller to stop the goods remains (*Cummings v. Brown*, 9 East, on p. 514).

The right to stop in transitu is defeated by a *bona fide* transfer of the bill of lading, although the consideration for the transfer is a debt due from the transferor to the transferee (*Leask v. Scott*, 2 Q. B. D., 376; 46 L. J. Q. B. 576, overruling *Rodger v. Comptoir d'Escompte*, L. R. 2 P. C., 393; 38 L. J. P. C., 30).

The mere fact that the buyer of goods has resold them, and that the bill of lading has been made out in the name of the person to whom they have been resold, does not defeat the right of the unpaid seller to stop in transitu. The rule is, that effect will always be given to an unpaid seller's right to stop in transitu, so long as it does not interfere with any rights which third parties may have acquired for valuable consideration. Thus, in the case where a buyer of goods has resold them before paying for them if (in consequence of the insolvency of the buyer) the unpaid original seller gives a valid notice to stop in transitu before the buyer has received any of the proceeds of the re-sale, the sub-buyer has the right to retain the goods, but the original seller is entitled to have his original purchase-money paid to him in full out of the purchase-money of the re-sale

(Ex parte *Golding, Davis & Co. re Knight*, 13 Ch. D., 628; ex parte *Falk re Kiell*, 14 Ch. D., 448).

The transfer, in order to be effectual to defeat the right, must be by authority of the transferor. Thus, if a bill of lading indorsed in blank be stolen from the consignee, and transferred by the thief for a valuable consideration, the right of the unpaid seller to stop in transitu would not be defeated (*Gurney v. Behrend*, 3 E. & B. 622, 23 L. J. Q. B., 265).

Again, the original buyer of the goods must have the complete property in the goods, in order that the transfer by him of the bill of lading may defeat the unpaid seller's right to stop in transitu. If the indorsement of the bill of lading by the seller of the goods to the buyer is of a special character, and transfers the property in the goods subject to the fulfilment of some condition; e.g. the acceptance of a bill of exchange, the right to stop in transitu will continue, notwithstanding that the buyer may have indorsed the bill of lading to a *bona fide* purchaser, until the condition is performed (*Wilmshurst v. Bowker*, 7 M. & G., 882; *Key v. Cotesworth*, 7 Exch., 595).

If by the indorsement of the bill of lading the indorser merely pledges or mortgages the property, the right to stop in transitu is not

gone, but the unpaid seller must satisfy the charge to secure which the bill of lading has been indorsed before he can regain possession of his goods (*Spalding v. Ruding*, 6 Beav., 376; *Coventry v. Gladstone*, L. R., 6 Eq., 44).

So also the right is subject to the discharge by the unpaid seller of any lien which may have attached to the goods during the transit (*Oppenheim v. Russell*, 1 N. R. 42).

SECTION V,

EFFECT OF THE BILL OF LADING ON THE CONTRACT TO CARRY GOODS.

25. *Common Carrier : Private Carrier.*—The carrier of goods by water has by law, independently of any express contract, certain rights and obligations, the extent and nature of which are determined by the character of the freighting business in which he employs his ship.

These rights and obligations are known generally as those of a common carrier and a private carrier.

The freighting business, which subjects the owners and masters of the ships engaged in it to the liabilities of a common carrier, has been defined to be 'general ships put up for the transportation of merchandise for persons in general, such as vessels employed in the coasting trade, or foreign trade, or on general freighting business for all persons offering goods on freight for the port of destination' (Story on Bailments, s. 501).

The common carrier's obligation is to carry the goods entrusted to him to their destination for a reasonable charge ; and he moreover insures

the thing carried against all loss or damage, except that which arises from some vice inherent in the thing carried, or from what the law calls the act of God, or the public enemy. By the act of God is meant any accident as to which the carrier can show that it was due to natural causes directly and exclusively without human intervention, and that it could not have been prevented by any foresight, pains, and care reasonably to be expected from the carrier (Lord Justice James in *Nugent v. Smith*, 1 C. P. D. 444; 45 L. J. C. P. 708).

The class of business which subjects the owners and masters of the ships engaged in it to the liabilities of a private carrier has been defined to be 'where the owner of a ship employs it on his own account generally, or if he lets the tonnage with a small exception to a particular person, and then for the accommodation of a particular individual, takes goods on board for freight, not receiving them for persons in general' (Story on Bailments, s. 501).

The obligation of a private carrier is to use ordinary care in the carriage of goods intrusted to him, but he is not, like the common carrier, an insurer of them (Lord Blackburn in *Liver Alkali Company v. Johnson*, L. R., 9 Exch., 3; 43 L. J., Exch. 218).

These definitions are probably for all practical

purposes sufficiently accurate and comprehensive; and in the face of the irreconcilably different opinions which have been expressed on the subject by the highest authorities, it would serve no good purpose to attempt any others (See the judgments of Brett, L.J., and Cockburn, L.C.J., in *Nugent v. Smith*, 1 C.P.D., 19, 423 ; 45 L. J., C. P., 19, 697).

26. *Contracts by Charter-party and Bill of Lading.*—It is not often that the obligations of a carrier by water, independently of express agreement, come into question, inasmuch as in practice shipowners and other persons engaged in freighting business almost invariably limit and define the terms on which they undertake to transport the goods received by them for carriage. This they may do to any extent and in any manner they please, for the law of England has not imposed any limits on the powers of carriers by water (as it has with certain land carriers) to bind a shipper by any stipulations to which they can obtain his assent (Turner, L.J., in *P. & O. Company v. Shand*, 3 Moo. P. C. N. S., 272).

In practice such stipulations are usually contained in the contract of charter-party and in the bill of lading.

A charter-party is the general name given to any contract by which the whole or greater part

of the carrying capacity of a ship is placed by the owner of the ship at the disposal of the charterer for the carriage of merchandise. Charter-parties differ from one another very much in the power over the ship and its crew which is given to the charterer. Sometimes a charter-party amounts to a virtual lease of the ship, with all her belongings, for a given time, so that master, stevedore, and crew become for the time the servants of the charterer. More frequently the form of charter-party is one by which the shipowner retains possession of his ship, but undertakes to carry in it the cargo to be supplied by the charterer to the destination, and for the freight mentioned in it. (See *Omoa and Cleland Company v. Huntley*, 2 C. P. D., 464, for a discussion of the former class of charter-party).

The bill of lading is not, technically speaking, a contract at all. It is, strictly, only evidence of the contract for carriage and delivery which is made at the time of shipment by the shipper of goods with the person who undertakes to transport them, whether that person be the owner of the ship or some one who has chartered her tonnage (Judgment of Lush, L. J., in *Crooks v. Allan*, 5 Q. B. D. on p. 40; 48 L. J., Q. B. on p. 20).

When a ship is under a charter-party containing stipulations on which the cargo to be

shipped as provided by the charterers is to be carried by the shipowner, bills of lading are, in practice, none the less signed and given; they being essential, firstly, as an acknowledgment of the shipment of the cargo; and, secondly, as a means of disposing of the cargo during its transit and obtaining it on its arrival. There are thus, in such cases, frequently two different written documents, both referring to the carriage of the same goods; and questions of difficulty often arise, especially in cases in which the charter-party and bill of lading from the use of printed forms contain provisions which contradict each other.

27. *The Contract by Bill of Lading Transferable.*—The great difference between the contract of carriage contained in a charter-party and the contract of carriage by bill of lading is that the rights under the latter are transferable, while those under the former are not.

The contract contained in a charter-party is binding on the parties to it, and on no one else. It is to the charterer alone that the shipowner looks for the performance of the duties imposed by it, *e.g.* to provide a cargo within a given time; and on the other hand the charterer alone can exact from the shipowner performance of the duties imposed on him by the charter-party, *e.g.* to call at a particular port for orders.

The contract made on the signature and receipt of the bill of lading, which may be roughly called the contract by bill of lading, is transferable in the same manner as the goods are which the bill of lading represents, and the contract rights under the bill of lading accompany the ownership of the goods. By the operation of the Bills of Lading Act, 1855, every consignee of the goods named in a bill of lading, and every indorsee of a bill of lading to whom the property in the goods mentioned in it passes, has transferred to him and vested in him all the contract rights and liabilities contained in the bill of lading, as if the contract contained in the bill of lading had been made with himself (18 & 19 Vict., c. 111, s. 1).

Although the expression used in the statute, 'contract rights contained in the bill of lading,' is not technically very accurate as a definition of the extent of the contract rights transferred by the indorsement of the bill of lading, the effect of the enactment upon the position of the consignee or indorsee, as defined by the statute, has been made clear by judicial construction. Such consignee or indorsee is put in exactly the same position as if he, instead of the original shipper, had shipped the goods, and received the bill of lading; that is to say, had entered into the contract which the shipper of goods

enters into upon signature and receipt of the bill of lading (*The 'Figlia Maggiore,'* L. R. 2 A. & E. 106; 37 L. J., Adm. 52; *Dracachi v. Anglo Egyptian Bank,* L. R. 3 C. P. 190, 37 L. J., C. P. 71; Lord Justice Brett, in *Glyn & Co. v. East and West India Dock Co.,* 50 L. J. Q. B. 67).

A bill of lading, after having been indorsed (*e.g.* as security for an advance of money), may be re-indorsed to the original shippers. In such a case the shipper has all the contract rights re-vested in him as fully as if he had never indorsed them away (*Short v. Simpson,* L. R. 1 C. P. 248; 35 L. J. C. P., 147).

The indorsee of a bill of lading is placed in the same position as the shipper, not only in respect of the contract rights and stipulations expressly mentioned in the bill of lading, but also in respect of those duties and obligations towards one another which the law imposes on the parties to the contract of which the bill of lading is evidence.

For example, the indorsee of a bill of lading can sue in his own name for damages which are the result of negligent stowage by the shipowner's stevedore. (*The 'Freedom,'* L. R. 3, P. C. 594).

Again, the indorsee is affected by any engagements or liabilities which would have affected the shipper or original consignee, had there been no indorsement of the bill of lading. Thus,

in a case in which there was a charter-party by which the stevedore was made the servant of the charterer, and the charterer shipped his own goods, and then indorsed the bill of lading to an indorsee, who was unaware of the existence of the charter-party, it was held that the indorsee acquired no right to demand compensation from the shipowners for injury to the cargo which was the result of the bad stowage of the stevedore (*Gilkison v. Middleton*, 2 C. B. N. S. 134; 26 L. J. C. P. 209).

28. *Ship under Charter-party.—Effect of Bills of Lading.*—Where a ship is under charter-party, and the charterer, for the purpose of providing the necessary cargo, puts up the ship as a general ship, then the master or agent who gives bills of lading to the different shippers of cargo acts in most of such cases in a double capacity, that is, his signature of the bill of lading binds at once the owner of the ship and the charterer.

Where persons ship goods on board such a chartered ship, ignorant of the existence of the charter-party, they and their consignees have a right to look for the fulfilment of the contract evidenced by the bill of lading to the owner of the ship as well as the charterers (*The 'St. Cloud'*, 1 B. & L. 4; *Sandeman v. Scurr*, L. R., 2 Q. B., 86; 36 L. J. Q. B., 58).

The liability of the shipowner in these cases is founded on the general doctrine of law that a shipowner by giving the master authority to sign bills of lading, gives the shippers, who are unaware that there is any agreement between shipowner and charterer, a right to hold the shipowner responsible for the fulfilment of the contract evidenced by the bill of lading (*Sandemann v. Scurr, supra*).

It is otherwise if the existence of the charter-party is known to the shipper of goods. In such a case the shipper or consignee can look to the charterer only for the fulfilment of the contract to carry his goods (*Newberry v. Colvin, 7 Bing, 190*).

Again, if the charter-party amount to a complete hiring of the ship, so that the captain and crew are the charterers' servants for the voyage, in such a case also it is from the charterer alone that the shipper or consignee can claim performance of the contract contained in the bill of lading (*Sandemann v. Scurr, ubi supra*; *Newberry v. Colvin, ubi supra*).

It is only where by the terms of the charter-party the charterer is for the time being put in the place of the shipowner, or where by some act of his own (*e.g.* by authorising his agent to sign bills of lading) he has made himself responsible for the carriage of the goods shipped

under a bill of lading, that performance of the contract in the bill of lading can be claimed from the charterer (*Wagstaffe v. Anderson*, 5 C. P. D. 171 ; 49 L. J. C. P. 485).

A particular instance may be mentioned, by way of illustration of the above propositions, in which the agents who signed the bills of lading of goods shipped on board a ship, which had been put up as a general ship, were themselves the charterers of the ship. It was held nevertheless, in that case, that the owners of the ship were responsible to a shipper of cargo who was unaware of the existence of a charter-party, for the fulfilment of the contract contained in the bill of lading (*Hayn Roman & Co. v. Culliford & Co.*, 3 C. P. D., 410 ; 47 L. J., C.P., 755).

29. *Incorporation of Charter-party.*—Where a ship is under charter it is very common to incorporate the whole or part of a charter-party by a reference to it in the bill of lading: ‘And all other conditions as per charter-party,’ is the form of phrase by which this is often effected. The effect of such a reference to a charter-party on the rights and liabilities of holders of bills of lading, who neither knew nor could know what terms the charter-party contained, was at one time much disputed, and judges of high eminence gave it as their opinion that the rights and liabilities of holders of bills of lading were

to be those which that instrument alone imposed, so that every one who bought or made advances on bills of lading could see clearly what his position with regard to the goods was (See per Brett, L.J., in *Gray v. Carr*, L. R. 6 Q. B., 522 ; 40 L. J. Q. B., on p. 264). But it has now been settled beyond question that the incorporation of a charter-party by such words as above indicated has the effect of making the conditions in the charter-party, however onerous and unexpected they may turn out to be, binding on every person to whom the bill of lading is negotiated (*Gray v. Carr*, *supra*: *Porteous v. Watney*, 3 Q. B. D., 534 ; 47 L. J. Q. B., 643).

The effect of this state of the law in cases where a chartered ship carries miscellaneous cargo, consigned to different persons under different bills of lading, is sometimes very anomalous. Thus, one holder of a bill of lading may be made to pay for the delays and negligences of another (*Porteous v. Watney*, *ubi supra*). And a purchaser of cargo may find himself compelled, before obtaining delivery of his goods, to pay compensation to the shipowners for delays caused by the charterer at the port of loading (*Gray v. Carr*, *supra*).

30. *Special Clauses protecting Shipowners.*—Bills of lading almost invariably contain clauses by which the shipowner means to except certain

perils from those whose consequences he would otherwise bear, and either to qualify or entirely get rid of his natural liability. As regards these, the shipper who accepts the bill of lading signed by the master is, as a general rule, bound by the terms which it contains, although in an action brought afterwards against the shipowner for the loss of the goods, he might swear that he had never read the bill of lading, and that he neither knew that it contained the terms of the contract of carriage, nor that there were conditions in it protective of the shipowner. The reason why the person receiving the bill of lading is so bound is because, in the great majority of cases, persons shipping goods do know that the bill of lading contains the terms of the contract of carriage. The shipbroker or the master delivering the bill of lading is entitled to assume that the shipper has that ordinary knowledge, and although it is quite possible to suppose that a person who is neither a man of business nor a lawyer, might on some particular occasion ship goods without in the least knowing what a bill of lading was, he ought to bear the consequences of his own exceptional ignorance. It would be plainly impossible for business to be carried on if every person who delivers a bill of lading had to stop to explain what a bill of lading was (Mellish, L.J., in *Parker v. South*

Eastern Railway, 2 C. P. D., 420; 46 L. J. C. P., 771; *Lewis v. McKee*, L. R., 4 Exch., 58; 38 L. J. Exch., 62, per Willes, J.).

31. *Unusual Clauses in very Small Print.*—

The above general rule is, however, not without exceptions. The numerous clauses which are designed to exonerate, if possible, the ship-owners from all liability as carriers, are often printed within the bill of lading in type so minute as not only not to attract attention to any of the details, but to be only readable by persons of good eyesight. Questions of difficulty often arise as to how far a shipper is bound by such stipulations in a bill of lading if his attention is not drawn to them at the time the bill of lading is handed to him. The law on this subject has recently been laid down as follows:—‘A bill of lading is not the contract, but only the evidence of the contract; and it does not follow that a person who accepts the bill of lading which the shipowner hands him, necessarily, and without regard to circumstances, binds himself to abide by all its stipulations. If a shipper of goods is not aware when he ships them, or is not informed in the course of the shipment that the bill of lading which will be tendered to him will contain such a clause, he has a right to suppose that his goods are received on the usual terms’ (Lord Justice Lush,

in *Crooks v. Allan*, 5 Q. B. D., on p. 40; 49 L. J. Q. B. 203).

The practical result of the recent authorities on this subject is that many disputes would be avoided if shippers would take the precaution to acquaint themselves beforehand with the terms of the printed bills of lading used by the firms of shipowners with whom they habitually ship goods.

SECTION VI.

DUTIES AND RESPONSIBILITIES OF MASTER ON THE VOYAGE.

32. *Delay and Deviation.*—By receiving goods under a bill of lading the master undertakes to carry them to the port of destination named in it without delay, and without deviation from the usual and direct course (*Davis v. Garrett*, 6 Bing. 725).

This undertaking may be, and often is, modified by express stipulations, by which a particular course is mentioned, or by which the right of the shipowner to deviate for particular purposes is reserved. Bills of lading of shipping firms and companies engaged in the general carrying trade frequently contain a deviation clause (See 'Form of Bill of Lading,' in the Appendix).

A deviation or delay may also be justified by the established custom of a trade where no contract stipulations inconsistent with it exist (*Salvador v. Hopkins*, 3 Burrows, 1707; *Vallance v. Dewar*, 1 Campbell, 505).

A deviation for the purpose of saving life is always justifiable, but not a deviation for the

mere purpose of saving property and making salvage (*Scaramanga v. Stamp*, 5 C. P. D. 295 ; 49 L. J. C. P. 674).

The repair of the ship or other necessity may also justify deviation or delay, but in such cases the deviation or delay must be limited to what is absolutely necessary (Maclachlan on Merchant Shipping, p. 396).

33. *Care of the Cargo*.—The master is bound to take every possible care of the goods entrusted to him, not merely in doing what is necessary to preserve them on board the ship during the incidents of the voyage, but also in taking reasonable measures to check and arrest their loss, destruction, or deterioration (*Tronson v. Dent*, 8 Moo, P. C., p. 449 : Willes, J., in *Notara v. Henderson*, L. R. 7 Q. B., 225 ; 41 L. J. Q. B., 138).

The usual exceptions in a bill of lading are no protection against the consequences of neglect to observe these duties (Willes, J., in *Notara v. Henderson*, *supra*).

34. *Duties when Ship Disabled*.—When in the course of the voyage the master is obliged to put in to an intermediate port in consequence of his ship being disabled from pursuing her voyage or requiring repairs, he is often compelled to exercise his own judgment as to what is best to be done in the interests of all parties.

The first duty of the master is towards the shipowners, and he must, therefore, in the first instance use every endeavour to convey the cargo to its place of destination (*Shipton v. Thornton*, 9 A. & E. on p. 333).

If therefore the ship can be repaired it is the master's duty to have the necessary repairs executed. If for this purpose the master has not funds in hand, it is his first duty, if possible, to communicate with his owners. If this is impossible, or from the urgent necessity of the case inexpedient, the master should endeavour to raise money on the personal credit of the owner. Failing these expedients, and the repairs being indispensable for the performance of the voyage, the master can hypothecate not only the ship but the whole or part of the cargo and freight (*The 'Gratitude,'* Tudor's Mercantile Cases, p. 30).

The repairs executed must be sufficient to render the ship seaworthy for the remainder of the voyage. A master is not justified, at an intermediate port, any more than at the original port of loading, in starting with an unseaworthy ship (*Worms v. Storey*, 11 Exch., 427; 25 L. J. Exch., p. 1).

35. *Duty towards Cargo: Transhipment.*—While the ship is being repaired, the master has the same duty with regard to the safe custody

and preservation of the cargo as he had while the ship was at sea. If any of it has been damaged, and the damage can be repaired or checked at the intermediate port without unreasonably deferring the resumption of the voyage, this should be done (*Notara v. Henderson, supra*).

If it is not practicable to repair and continue the voyage, the first duty of the master with respect to the cargo is, if possible, to communicate with the owners of it or their agents, and take their instructions. If the owners of the cargo choose to take delivery of it at the intermediate port, they have a right to do so on payment of a proportionate amount of freight. The master or agent of the shipowner (except in cases where he is ready to forward the cargo to the port of destination, but is prevented from doing so by the owner of the cargo or his agent) has no right to claim full freight at any port, except the port of destination (*Shipton v. Thornton*, 9 A. & E. on p. 336 ; Notes to '*The Gratitude*': *supra*).

The possibility of communicating with the owners of the cargo must depend on the particular circumstances of each case ; and the master in deciding upon his course of action, has a right to take into account the likelihood of receiving a reply in sufficient time, the nature

of the cargo and other incidents of the position in which he finds himself placed (*Australian Steam Navigation Company v. Morse*, L. R., 4 P. C. 222).

If there are no means of communicating with those interested in the cargo, the master may, in the interests of his owner, tranship the cargo, and have it sent to its destination in another ship. If this is done, the consignee or owner of the goods at the port of discharge, is bound to receive the cargo and pay the freight originally stipulated (*Shipton v. Thornton, supra*).

The rate of freight and the state of the cargo must be considered by the master before he tranships. He has no right, while acting in the interests of the shipowner to tranship at a rate of freight which would involve the owner of the cargo at the port of destination in paying more for their carriage than it was originally stipulated that he should pay. Nor has the master a right to tranship cargo which had become so deteriorated and damaged that it would be inevitably worthless to the owner.

When the circumstances are such that it is no longer practicable for the master to fulfil the shipowner's contract, nor possible to communicate with the owners of cargo, it then becomes his duty to act as the agent of the owners of cargo, and do with the cargo what is best in

their interests. If acting in the interests of the owners of cargo, and as their agent for the moment, the master thinks it best to tranship the cargo at a higher rate of freight than it was originally stipulated should be paid, the owners of the cargo at the port of destination cannot repudiate what was done, but must pay the extra freight (*Shipton v. Thornton*, 9 A. & E. on p. 337).

If, on the other hand, it is for the interest of the cargo owner, having regard to the state of the cargo, or impossibility of transhipping it under circumstances advantageous to him, that it or part of it should be sold at the intermediate port, it is the master's duty to have this done. The proceeds of the sale belong to the owner of the cargo, and the shipowner has no right to any freight whatever on account of cargo sold under such circumstances (*Mordy v. Jones*, 4 B. & C., 394; *Hopper v. Burness*, 1 C. P. D., 137; 45 L. J. C. P., 337).

It is not uncommon for the bills of lading of shipowners and shipping companies engaged in the general carrying trade to contain special clauses authorising transhipment at the master's discretion. (See Form in the Appendix).

SECTION VII.

DELIVERY UNDER BILL OF LADING.

36. *Arrival of the Ship: Place of Delivery.*— Unless the bill of lading specially stipulates that goods shall be delivered in a particular place or manner at the port of discharge, simply containing such words as 'to be delivered at the port of London,' the custom and usage of the particular port govern both the manner and place of delivery. The ship is called an arrived ship when she has reached the place in the port which the local regulations assign to the discharge of cargoes of the particular trade in which the ship is engaged.

Illustrations of the force of the words 'arrived ship' are to be found in the following cases :

In a case in the coal trade, the custom of the port of London being that coal vessels unload in the Pool, a ship, after arriving in the port of London, was detained till she could enter the Pool; and the court held that she was an arrived ship as soon as, and not before, she had entered the Pool (*Kell v. Anderson*, 10 M. & W., 498).

In a case in the timber trade, the court held

that a ship was not to be considered an arrived ship in Liverpool until she had reached the dock and place in the dock where, according to the regulations of the port, timber ships can discharge (*Steamship Company Norden v. Dempsey*, 1 C. P. D., 654; 45 L. J. C. P., 764).

Particular stipulations in the bill of lading, directing the place in the port and the manner of delivery, must be literally obeyed as far as may be compatible with the existing means and accommodation for landing goods, the time of arrival, the state of the tide, interruptions from accidental causes, and other circumstances which may apply to the port of arrival (Tindal, C. J., in *Gatliffe v. Bourne*, 4 Bing. N. C. 214).

Subject to the regulations of the port, the master is bound to obey reasonable directions of the consignee as to the place in the port where he takes the ship to discharge. If after the ship has arrived at an unloading berth the consignee or holder of the bill of lading orders the captain to proceed to another and proper unloading berth, it is the captain's duty to do so; but the expense of moving from one berth to another falls on the person giving the orders (*The 'Felix'*, L. R. 2 A. & E. 273; 37 L. J. Adm. 48).

By bringing the ship to the place where she

becomes an arrived ship, the duty of the master has ended, and the consequence of any delays due to berths being overcrowded, or the authorities not permitting her to be unloaded at once, falls on the consignee (*Cawthorn v. Trickett*, 15 C. B. N. S. 754).

37. '*As near as she may safely get.*'—These words are often inserted in bills of lading, with the effect that the ship becomes an arrived ship when the master has brought her in fact as near as he can to her destination: and the words are not controlled by any custom of the port of discharge. For instance, in a late case, where a ship was destined by the bill of lading for Hamburg, or as near as she might safely get—the nearest place being Stade—the court held that the ship was an arrived ship as soon as she had reached the latter place, and that the words could not be controlled by a custom of the port of Hamburg, not to unload at Stade (*Hayton v. Irwin*, 5 C. P. D. 130).

If, however, upon the arrival of the ship at the nearest place, she can, by being lightened of part of her cargo, be brought to a nearer and more convenient place, the master is bound, if required by the consignee, to take the necessary steps to have the ship lightened, and to proceed there. But in such a case the consignee must provide or pay for the means of lightening or

the ship (*Capper v. Wallace*, 49 L. J. Q. B. 350 5 Q. B. D. 163).

38. *Duty of the Consignee.*—The ship having arrived, the owner of the goods should be ready to receive them. He is bound to take delivery of his goods within a reasonable time after the arrival of the ship. Unless stipulated for, there is no obligation on the master to give notice of his arrival.

After the lapse of a reasonable time, if delivery of the goods has not been taken, the master has a right to land them, and have them placed in a warehouse; and if he does so he can (provided he take the necessary precaution to do so) preserve all the rights over them in respect of unpaid freights and charges, which he would have had if the goods had remained in the ship (*Mors le Blanch v. Wilson*, L. R. 8 C. P. 227 : 42 L. J. C. P. 70).

Bills of lading often contain a clause giving notice that goods will be landed and warehoused if delivery is not taken within a specified time, *e.g.* 24 hours after public notice of arrival has been given.

When merchandise is imported into the United Kingdom, the importer has various duties imposed on him by the Customs laws. The regulations which have to be complied with by importers, are now regulated by the Customs

Laws Consolidation Act, 1876, the principal sections of which will be found in the Appendix.

39. *Statutory Warehouses.*—In ports in the United Kingdom, under the Merchant Shipping Act, 1862, there are special powers and regulations by which the master of a ship arriving from foreign parts, if the owner of the goods fails to take delivery, may place the goods in a wharf or warehouse, and without any further action preserve all his rights over them as if he had never let them out of his possession. The sections of the Act which deal with this subject and shew the course to be pursued will be found set out in the Appendix (p. 83).

The statute does not interfere with ports in which the discharge of cargoes and landing and delivery of goods is regulated by local statutes.

In the port of London, for instance, two local statutes are in existence, viz.: the 9 & 10 Vict., c. 399, called 'An Act for the regulation of the legal quays within the port of London,' and the 11 & 12 Vict., c. 18, called 'An Act for the regulation of certain sufferance wharves in the port of London.' These acts give the master in effect very much the same powers as are contained in the General Act of landing the goods in a warehouse, and putting a stop on them for the freight due.

If before the whole of a cargo has been landed,

whether the landing takes place under the statutory powers, or under some express stipulation in the bill of lading, the consignee is in time to claim the remainder, he has a right to have it delivered direct to himself, provided the delivery to him can be accomplished without any further loss or injury to the shipowner than would have been the case if the consignee had been ready before any of the goods had been discharged (*Wilson v. London &c. Navigation Company*, L. R., 1, C. P., on p. 68 ; 35 L. J. C. P., 9).

40. *Manner of Delivery.*—In the absence of any stipulation to the contrary, the manner of delivery must be according to the usage of the port. For instance, in the port of London the usage, as proved in a late case at the Guildhall, is for a steamer to unload her cargo at a quay in a dock, and for the dock company to put it into lighters that it may be forwarded to the consignees. The shipowner pays the dock charges if the goods are applied for within twenty-four hours, otherwise they are put into a warehouse by the dock company, and the consignees become liable for the charge of warehousing (*Gatliffe v. Bourne*, 4 Bing., N. C., 314 ; and see the judgment of Lord Justice Brett in *Petrocochino v. Bott*, L. R., 9 C. P., 355 ; 43 L. J. C. P., on p. 217).

Otherwise in ordinary cases the duty of the master is to provide the necessary tackle for delivering the cargo from the ship, and it is the duty of the owner of the cargo to receive the cargo, either in lighters or on the quay, as the case may be.

The duty of delivering the cargo is upon the mate, and consistently with his being accountable for the proper delivery of the cargo, and with the responsibility of the owners, the master is bound to give every reasonable facility for discharging.

Where the cargo is of a nature that it has to be filled in the hold, and hoisted on deck through a hatchway, and a tally kept of the amount discharged, the owners of the cargo have, in the absence of any agreement to the contrary, no right to require more than one hatch to be worked:—provided that by working one hatch all the cargo can be discharged within the time stipulated by the parties or allowed by law. If the owner of the cargo desires a more rapid delivery he must pay the extra expense incurred.

41. *Weighing and Measuring.*—When cargoes are of a nature that require weighing or measuring in order to ascertain the quantity delivered, cases of difficulty often arise. These may arise from the different modes of measure-

ment adopted at different ports, or owing to the cargo having expanded in bulk during the voyage, or to other causes which may lead to disputes at the port of discharge as to the correctness of the quantity delivered. In such cases there is no security against disputes, unless the mode or scale of measurement is determined by previous agreement in the bill of lading or charter-party or otherwise; and it is clear that disputes are less likely to arise if the intake method of measurement is agreed upon, as the method which is to govern the measurement of the cargo on its discharge (Bowen, J., in *Spaight v. Farnworth*, 5 Q. B. D. 118; 49 L. J. Q. B. 346).

In the absence of stipulation or custom to the contrary, the party who requires cargo to be weighed or measured must supply or pay for the means of doing so (Willes, J., in *Coulthurst v. Sweet*, L. R., 1 C. P. on p. 654).

42. *Delivery when Complete.*—The question of when a delivery to a consignee is complete, so as to fulfil a contract of sale, or defeat the right of a vendor of goods to stop them in transitu, does not belong to the purpose of this work. It is, however, important to define what constitutes a delivery, so as to discharge the ship-owner or master from responsibility. In order to complete a right and true delivery, the goods must be placed under the control of the person

who is to receive them (Willes, J., in *Meyerstein v. Barber*, L. R., 2 C. P., on p. 50 ; 36 L. J. C. P. on p. 59).

43. *Time for Discharging: Demurrage: Lay Days.*—Where a ship is under charter, it is usual for the charter-party to contain provisions limiting the time for the discharge of the cargo. These provisions are inserted for the protection of the shipowner, that his ship may not be detained at the port of discharge beyond a certain time. The days mentioned for discharging are termed lay days. If by reason of the delay of the consignee in receiving his cargo the ship is detained beyond her lay days, the shipowner is entitled to compensation from the charterer, which compensation is generally termed demurrage.

There are two classes of demurrage—viz., demurrage proper and demurrage in the nature of damages for detention of the ship. Where a charter-party provides that if the ship is detained over and above her lay days, a certain sum per day shall be paid for a definite period, that sum is demurrage proper ; where the ship is detained longer than any time stipulated in the charter-party, the compensation payable is, in the eye of the law, damages payable for the detention of the ship.

The parties to the bill of lading are not

concerned with demurrage unless there is some stipulation to that effect in the bill of lading, or unless they are bound by the demurrage clauses of the charter-party. Where the bill of lading is silent as to demurrage stipulations, the holder is by law bound not to detain the ship for purposes of delivery more than a reasonable time after her arrival, and is liable to compensate the shipowner or master for an unreasonable detention (*Fowler v. Knoop*, 4 Q. B. D., 299 ; 48 L. J. Q. B., 333).

If the bill of lading incorporates the terms of any charter-party relating to demurrage, the holder is bound by them, but the liability must be imposed by plain words (*Willes in Chappel v. Comfort*, 10 C. B., N. S., 802 ; 31 L. J. C. P., 58).

SECTION VIII.

FREIGHT—LIENS.

44. *Freight in General: Lien.*—Freight is the reward payable to the carrier for the carriage and delivery of goods. Its principal incidents are that no part of it becomes due until it has been earned by the carrier, and that, when due, the carrier has a lien or right to retain possession of the goods till the whole of it is paid.

The amount of freight payable on goods shipped under a bill of lading is usually stated in the margin of the bill of lading, where it is convenient for reference and as evidence of the terms of the contract.

A sum of money payable at the port of shipment before the arrival of the ship at her port of discharge is not freight, even although so described in the bill of lading. The law regards such a payment as one to be made, not for the actual carriage of the goods, but for taking them on board and undertaking to carry them (*Kirchner v. Venus*, 12 Moore, P. C. C., p. 390).

When, therefore, a bill of lading stipulates for payment in advance of the whole or part of the freight, no right of lien attaches at law, because the payment is not on account of freight proper,

and for the same reason such payment in advance when made cannot be recovered back from the shipowner in the event of his failing to earn freight (*Byrne v. Schiller*, L. R., 6 Exch., 20 and 319; 40 L. J. Exch., 177).

A stipulation in a bill of lading that the master is to have a lien for the sum of money called freight in it will be binding on all who subsequently become parties to the bill of lading.

45. *Statements as to Freight in Bill of Lading.*—The shipowner cannot demand from the consignee or holder any rate of freight other than that named in the bill of lading, even where the rate is nominal, *e.g.*, 1s. per ton (*Mercantile Bank v. Gladstone*, L. R., 3 Exch. 233; 37 L. J. Exch., 130).

A statement on the face of a bill of lading, that part of the freight has been prepaid, even if contrary to the fact, would be absolutely binding on the shipper in the event of the bill of lading being negotiated to a *bonâ fide* transferee; and such transferee would have the right to claim delivery on payment only of the balance of freight shown on the bill of lading to be due (*Howard v. Tucker*, 1 B. & Ad. 712; *Tamvaco v. Simpson*, L. R., 1 C. P., 363; 35 L. J. C. P., 196).

In putting in such statements into the bill of lading, the master or agent must not have exceeded his authority; if he has, those whom

he represents are not bound by what he has done (*Reynolds v. Fex*, 34 L. J. Q. B., 251).

So also a custom of a port or trade to the same effect might be binding provided all the parties to be affected were cognisant of it and could be considered to have contracted on the footing that they would be so bound (*Kirchner v. Venus*, *supra*, per Lord Kingsdown).

46. *Persons Liable to Pay Freight*.—The person in general liable to pay *freight* at the port of discharge is the person who as owner of the goods has the right to demand delivery of them under the bill of lading.

When a bill of lading has been endorsed to an agent or dock owner for the purpose of having the goods landed and warehoused, the master of the ship can either withhold delivery till his *freight* is paid, or deliver to the agent or dock owner, and claim the freight from the true owner, though his lien has been lost. But if the master has accepted and acted upon an indorsement which directs him to deliver to agents or wharfingers and to look to them alone for freight, he cannot afterwards claim the freight from the true owner (*Lewis v. McKee*, L. R., 4 Exch., 58 ; 39 L. J. Exch., 62).

47. *On what Quantity of Cargo*.—As a general principle, freight, in the absence of any agreement to the contrary, becomes payable only on

so much cargo as has been both shipped, carried, and delivered.

If less has been shipped than has been delivered, as in the case of cargoes which heat under sea-water damage, freight is payable on the lesser quantity shipped. If less has been shipped and carried than has been delivered, as for instance in the case of goods which are compressed during the voyage and expand on being unloaded, freight is payable on the compressed and not on the expanded measurements. If on the other hand less has been delivered than has been shipped, as in the case of goods lost on the way, then freight would be payable only on the quantity delivered (*Bowen J., in Spaight v. Farnworth*, 5 Q. B. D., on page 118; 49 L. J. Q. B., 348).

48. *Deductions for Damage not Allowed.*—A consignee has no right to withhold payment of the freight, or any part of it, on account of any of the cargo having been damaged during the transit. Any claims which a consignee may have against the carrier of the cargo for compensation for damage to the cargo or otherwise, must be made and dealt with irrespective of the amount due for freight.

No doubt, under some circumstances, owing to the course of modern legal procedure, compensation for damage to cargo may be set off against

a debt for freight. For if a shipowner or master having parted with his lien for freight and delivered the cargo, is compelled afterwards to take legal proceedings for the recovery of his freight, he may be met by a cross claim for compensation; but that is in consequence of special statutory provisions relating to legal proceedings generally (Judicature Act, 1873, s. 24). The right to refuse delivery till the whole of the freight which has been earned has been paid is unaffected by any cross claims of the consignee.

49. *Deductions for Discount, &c.*—The amount of freight payable by the consignee may be affected by provisions as to discount, rate of exchange, or other arbitrary deductions, which may be the result either of express stipulations, or of customs of special trades or ports. As to any such customs, the rule of English law is that in order that a custom of a trade or port may bind the parties to a maritime contract, it must firstly be so definite and notorious that it may be regarded as impliedly forming part of the contract, and secondly that it must not vary or supersede any written stipulation relating to its subject matter (*Brown v. Byrne*, 3 E. & B., 703; 23 L. J. Q. B., 313).

50. *Freight pro rata itineris.*—If the freight has not been earned, it cannot be recovered;

but if before the termination of the intended voyage there is a voluntary acceptance of the goods at a point short of their destination, in such a manner as to raise a fair inference that the further transport was intentionally dispensed with, a new contract will be implied to pay freight (viz. at the rate mentioned in the bill of lading) for that portion of the voyage which has been actually performed (*Vlierboom v. Chapman*, 13 M. & W., 230; *Metcalfe v. Britannia Iron Works Co.*, 2 Q. B. D., 423; 46 L. J. Q. B. 443).

As has been already mentioned, freight for goods which the master has from any cause been obliged to sell or abandon, is lost (*Mordy v. Jones*, 4 B. & C. 394).

51. *Miscellaneous Charges: Primage.*—Besides the freight, there are a variety of miscellaneous charges at the port of discharge which may be payable by virtue of express stipulations or customs of trades or ports. One of these is *primage*, which is a gratuity to the master, the amount of which is usually calculated by a percentage on the freight.

Where the master is paid a salary, and accounts for all his receipts to his owner, *primage* is nothing more than a part of the freight. Thus, where a shipowner had by charter-party contracted to carry a shipowner's goods for a fixed sum, in full discharge of all freight, and

the bill of lading of the goods stipulated for primage, it was held that the primage could not be demanded from the shipper's agent at the port of discharge (*Caughey v. Gordon*, 3 C. P. D., 419).

52. *Liens of the Master for special Charges.*— Besides the lien which is discharged by the payment of freight, the master has often the right under the bill of lading to detain the goods on account of special charges. Bills of lading vary widely in the particular stipulations which they may contain, but they cannot create a lien except for a fixed or ascertainable sum, so that all claims for unliquidated damages, by which is meant money to be paid as compensation for some act or omission of a party, the amount of which cannot be ascertained, must form the subject of an action at law.

Bills of lading also often incorporate, by reference to a charter-party, various liens or rights of detention, which are binding upon all parties to the charter-party, and which consequently can be enforced against the consignee of the goods, if he has become either expressly or by implication a party to that contract. But a holder to whom a bill of lading has been transferred for value is not bound by liens created by incorporation with a charter-party, unless by force of such plain unambiguous

words within the bill of lading as will give to a purchaser notice that he may be bound by the conditions of a document whose contents are unknown to him.

The clause in a charter-party which secures the shipowner's lien is very commonly in the following terms:—

‘All liability of the charterers under this agreement shall cease as soon as the cargo is on board, except as to the payment (if any) to be made on sailing, and any demurrage incurred before bills of lading are signed; and all questions of short delivery, demurrage, and damage for detention at port of discharge, must be settled with the receivers of the cargo at the port of discharge, which settlement is to be binding on the owners and charterers, the owners and masters having a lien on the cargo for all freight, dead freight, damages for detention and demurrage.’

Such a clause incorporated into a bill of lading in plain words (*e.g.*) ‘Freight and all other conditions as per charter-party,’ empowers a captain, without regard to the actual holder of the bill of lading, to detain the cargo till all fixed charges mentioned in that clause have been paid; but the words purporting to give a lien for damages are wholly inoperative.

If the words of incorporation are not plain the liens cannot be enforced against a holder of

the bill of lading unless he is otherwise a party to the charter-party. The only rights of the master at the port of discharge are those which may be clearly contained within the bill of lading itself, and all claims for further freight or for any other sums due to him must be made by the shipowner against anyone who may be liable under the terms of the charter-party. The stipulation in the charter-party that the charterers' liability shall cease on shipment of the cargo, confines the shipowner to such rights as are expressly secured to him by the bill of lading.

SECTION IX.

DAMAGED CARGO : EXCEPTED PERILS.

53. *Damage to, or Loss of Cargo.*—Where goods on delivery are found to be damaged or deficient, the carrier is in general liable to compensate the consignee for damage or deficiency unless occasioned by causes from the responsibility for which the carrier is exempted, either by law or contract stipulations.

Where goods are shipped under a bill of lading, the causes of loss of or damage to the goods from the responsibility for which it is intended that the shipowner is to be exempt, are usually specified in the bill of lading. The extent to which such clauses bind the parties to a bill of lading has been already discussed. (See s. 27.)

A bill of lading in the ordinary form states that the goods which it represents were shipped in good condition; if, then, on delivery any part of them turn out to be damaged or to have perished, it lies on the shipowner to show that the damage or loss arose from causes from which he is either by law or contract protected (*The 'Peter der Grosse,'* 1 P. D. on p. 420).

54. *Exceptions in Bill of Lading.*—Courts of Justice, when clauses in maritime contracts restricting the shipowner's responsibility have come before them, have construed such clauses as much as possible in favour of the shipper. If damage to or loss of the goods is shown to have been, not accidental, but due to negligence on the part of the shipowner or his servants, then mere general words of exception will not excuse the shipowner. For example, an exception of damage arising from leakage and breakage has been held not to cover leakage and breakage which were the result of negligent stowage (*Phillips v. Clark*, 2 C. B., N. S., 156; 26 L. J. C. P., 156; *Czech v. General Steam Company*, 37 L. J. C. P., p. 3; L. R., 3 C. P., 14).

So, again, general words excepting 'barratry' and 'perils of the sea,' are not sufficient to relieve a shipowner from liability for damage to cargo caused by collision due to his (the shipowner's) negligence (*Lloyd v. General Iron Screw Company*, 33 L. J. Exch., 269; 3 H. & C., 284; *Grill v. the same*, 37 L. J. C. P., 205; L. R., 3 C. P., 476).

The following are illustrations of the interpretations which the courts have put upon some clauses of exception which are often to be found in bills of lading.

55. *The Act of God:* (Illustrations).—Injury

to cargo by rats, even where the shipowner had done everything in his power to prevent it. Held not an injury by the act of God (*Kay v. Wheeler*, L. R. 2 C. P. 302).

The death of a mare, ascribed to injuries caused partly by the rolling of the ship, partly by struggles of the animal, occasioned by fright in a violent storm, was held to be within the definition 'act of God' (*Nugent v. Smith*, 1 C. P. D., 423; 45 L. J. C. P., on p. 707).

56. *The King's Enemies*.—The practical effect of these words is to protect a shipowner where the fulfilment of his contract has been prevented through war having broken out. The expression includes not merely the enemies of this country, but enemies of the country to which the ship, and the shipowner who gives the bill of lading, belong. For example, where a Mecklenburg ship, with goods consigned under a bill of lading to this country, was captured by the Danes, with whom the Duchy of Mecklenburg was at war, the shipowner was held protected by these general words (*Russell v. Niemann*, 17 C. B., N. S., 163; 34 L. J. C. P., 10).

57. *Restraint of Princes*.—These words cover the case where the voyage is prevented or delayed by blockade or siege (*Rodoconachi v. Elliott*, 43 L. J. C. P., on p. 258; L. R. 9, C. P., 518, Bramwell, B).

58. *Perils or Dangers of the Seas, Rivers, and Navigation.*—These words have been held to include injury to cargo by an accidental collision with another ship (*Buller v. Fisher*, Peake's Add. Cas., 183).

They do not include—

Unjustifiable confiscation of cargo by a foreign tribunal (*Spence v. Chadwick*, 10 Q. B., 517).

Damage by water let in through holes bored in the ship's sides by the crew, or any other damage by acts of the crew amounting to barratry (*The 'Chasca'*, L. R., 4 A. & E., 446, 44 L. J. Adm. 17).

Damage to cargo by its becoming contaminated by other cargo of an injurious nature placed near to it (*The 'Freedom'*, L. R., 3 P. C., 594).

59. *Loss by Robbery or Theft.*—The words by which the shipowner is exempted from liability to account for goods which have been robbed or stolen are generally 'the act of thieves, robbers, barratry of master or mariners.'

The word 'robbers' alone was held to cover only a loss by violent robbery, and not to protect from a loss by theft (*Rothschild v. Royal Mail Steam Company*, 7 Exch., 734).

The words above quoted were held to be no protection to the shipowner in a case where a

box of diamonds had been stolen during the voyage, and it appeared that the theft had been committed either by one of the crew or one of the passengers (*Taylor v. Liverpool & G. W. Steamship Company*, L. R., 9 Q. B., 546 ; 43 L. J. Q. B., 205).

60. *Not accountable for Leakage, Breakage, &c.*—This exception is limited to leakage or breakage of the actual goods themselves mentioned in the bill of lading. If cargo shipped under a bill of lading containing this exception is damaged by leakage from other goods, *e.g.* leakage of oil from barrels, the shipowner is liable (*Thrift v. Youle*, 2 C. P. D., p. 432 ; 46 L. J. C. P.; *The 'Nepoter'*, L. R., 2 A. & E., 375).

61. *Fire.*—This exception does not relieve the shipowner from a contribution to general average if a shipper's goods have been damaged in the course of extinguishing a fire which has broken out during the voyage (*Stewart v. West India Dock Company*, L. R., 8 Q. B., 88, 362 ; 42 L. J. Q. B., 191).

62. *Insurable Damage.*—'*The shipowner not to be liable for any damage to any goods which is capable of being covered by insurance ; nor for any claim notice of which is not given before the removal of the goods.*' This clause does not exempt the shipowners from contributing to general average if the shipper's goods have

sustained damage coming under that head (*Crooks v. Allan*, 5 C. P. D., 38 ; 49 L. J. Q. B., 201).

63. *Stale Claims*.—Bills of lading sometimes contain a stipulation protecting the shipowner against stale claims for damage, *e.g.*, that no claim will be recognised unless made before the goods are removed. Such a stipulation will include all kinds of damage, even such as could not be detected at once (*Moore v. Harris*, 1 App. Cases, p. 318, and on p. 329).

APPENDIX.

A.

THE BILLS OF LADING ACT,

18 & 19 Victoria, c. 111.

An Act to Amend the Law relating to Bills of Lading. [14th August, 1855.]

WHEREAS by the custom of merchants a bill of lading of goods being transferable by endorsement the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property : And whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bonâ fide* holder for value should not be questioned by the master or other person signing the same on the ground of the goods not having been laden as aforesaid : Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

G

Rights under Bills of Lading to vest in Consignee or Endorsee.

I. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Not to affect Right of Stoppage in transitu or Claims for Freight.

II. Nothing herein contained shall prejudice or affect any right of stoppage in transitu, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee, by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

Bill of Lading in Hands of Consignee &c., conclusive Evidence of the Shipment as against Master, &c.

III. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board:

Proviso.

Provided, that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

B.

THE MERCHANT SHIPPING ACTS,
AMENDMENT ACT, 1862.

DELIVERY OF GOODS AND LIEN FOR FREIGHT.

66. The following terms used in the sections of this Act hereinafter contained shall have the respective meanings hereby assigned to them, if not inconsistent with the context or subject matter ; that is to say,

Interpreta
tion of terms

The word 'report' shall mean the report required by the customs laws to be made by the master of any importing ship : 'Report.'

The word 'entry' shall mean the entry required by the customs laws to be made for the landing or discharge of goods from an importing ship : 'Entry.'

The word 'goods' shall include every description of wares and merchandise : 'Goods.'

The word 'wharf' shall include all wharves, quays, docks, and premises in or upon which any goods when landed from ships may be lawfully placed : 'Wharf.'

The word 'warehouse' shall include all warehouses, buildings, and premises in which goods when landed from ships may be lawfully placed : 'Warehouse'

The expression 'wharf owner' shall mean the occupier of any wharf, as hereinbefore defined : 'Wharf owner.'

' Warehouse owner.' The expression 'warehouse owner' shall mean the occupier of any warehouse, as hereinbefore defined :

Shipowner' The word 'shipowner' shall include the master of the ship and every other person authorised to act as agent for the owner, or entitled to receive the freight, demurrage, or other charges payable in respect of such ship.

' Owner of goods.' The expression 'owner of goods' shall include every person who is for the time being entitled, either as owner or agent for the owner, to the possession of the goods, subject, in the case of a lien, if any, to such lien.

Power to shipowner to enter and land goods in default of entry and landing by owner of goods.

67. Where the owner of any goods imported in any ship from foreign parts into the United Kingdom fails to make entry thereof, or having made entry thereof to land the same or take delivery thereof and to proceed therewith with all convenient speed, by the times severally hereinafter mentioned, the shipowner may make entry of and land or unship the said goods at the times, in the manner, and subject to the conditions following ; (that is to say,)

- (1.) If a time for the delivery of the goods is expressed in the charter party, bill of lading, or agreement, then at any time after the time so expressed :
- (2.) If no time for the delivery of the goods is expressed in the charter party, bill of lading, or agreement, then at any time after the expiration of seventy-two hours, exclusive of a

Sunday or holiday, after the report of the ship:

- (3.) If any wharf or warehouse is named in the charter party, bill of lading, or agreement, as the wharf or warehouse where the goods are to be placed, and if they can be conveniently there received, the shipowner in landing them by virtue of this enactment shall cause them to be placed on such wharf or in such warehouse :
- (4.) In other cases the shipowner in landing goods by virtue of this enactment shall place them in or on some wharf or warehouse on or in which goods of a like nature are usually placed ; such wharf or warehouse being, if the goods are dutiable, a wharf or warehouse duly approved by the Commissioners of Customs for the landing of dutiable goods :
- (5.) If at any time before the goods are landed or unshipped the owner of the goods is ready and offers to land or take delivery of the same, he shall be allowed so to do, and his entry shall in such case be preferred to any entry which may have been made by the shipowner.
- (6.) If any goods are, for the purpose of convenience in assorting the same, landed at the wharf where the ship is discharged, and the owner of the goods at the time of such landing has made entry and is ready and offers to take delivery thereof and to convey the same to some other wharf or warehouse,

such goods shall be assorted at landing, and shall, if demanded, be delivered to the owner thereof within twenty-four hours after assortment ; and the expense of and consequent on such landing and assortment shall be borne by the shipowner :

- (7.) If at any time before the goods are landed or unshipped the owner thereof has made entry for the landing and warehousing thereof at any particular wharf or warehouse other than that at which the ship is discharging, and has offered and been ready to take delivery thereof, and the shipowner has failed to make such delivery and has also failed at the time of such offer to give the owner of the goods correct information of the time at which such goods can be delivered, then the shipowner shall, before landing or unshipping such goods under the power hereby given to him, give to the owner of the goods or of such wharf or warehouse as last aforesaid twenty-four hours notice in writing of his readiness to deliver the goods, and shall, if he lands or unships the same without such notice, do so at his own risk and expense.

If, when goods are landed, the shipowner give notice for that purpose, the lien for freight is to continue.

68. If, at the time when any goods are landed from any ship and placed in the custody of any person as a wharf or warehouse owner, the shipowner gives to the wharf or warehouse owner, notice in writing that the goods are to remain subject to a lien for freight or other charges payable to the

shipowner to an amount to be mentioned in such notice, the goods so landed shall, in the hands of the wharf or warehouse owner, continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof; and the wharf or warehouse owner receiving such goods shall retain them until the lien is discharged as hereinafter mentioned, and shall, if he fail so to do, make good to the shipowner any loss thereby occasioned to him.

69. Upon the production to the wharf or warehouse owner of a receipt for the amount claimed as due, and delivery to the wharf or warehouse owner of a copy thereof or of a release of freight from the shipowner, the said lien shall be discharged.

Lien to be discharged on proof of payment.

70. The owner of the goods may deposit with the wharf or warehouse owner a sum of money equal in amount to the sum so claimed as aforesaid by the shipowner, and thereupon the lien shall be discharged; but without prejudice to any other remedy which the shipowner may have for the recovery of the freight.

Lien to be discharged on deposit with warehouse owner.

71. If such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does not within fifteen days after making it give to the wharf or warehouse owner notice in writing to retain it, stating in such notice the sum, if any, which he admits to be payable to the shipowner, or, as the case may be, that he does not admit any sum to be so payable, the wharf or warehouse owner may, at the expiration of such fifteen

Warehouse owner may at the end of fifteen days if no notice is given, pay deposit to shipowner.

days, pay the sum so deposited over to the shipowner, and shall by such payment be discharged from all liability in respect thereof.

Course to be
taken if
notice to
retain is
given

72. If such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does within fifteen days after making it give to the wharf or warehouse owner such notice in writing as aforesaid, the wharf or warehouse owner shall immediately apprise the shipowner of such notice, and shall pay or tender to him out of the sum deposited the sum, if any, admitted by such notice to be payable, and shall retain the remainder or balance, or, if no sum is admitted to be payable, the whole of the sum deposited, for thirty days from the date of the said notice ; and at the expiration of such thirty days, unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum or otherwise for the settlement of any disputes which may have arisen between them concerning such freight or other charges as aforesaid, and notice in writing of such proceedings has been served on him, the wharf or warehouse owner shall pay the said balance or sum over to the owner of the goods, and shall by such payment be discharged from all liability in respect thereof.

After ninety
days ware-
house owner
may sell
goods by
public
auction.

73. If the lien is not discharged, and no deposit is made as hereinbefore mentioned, the wharf or warehouse owner may, and, if required by the shipowner, shall, at the expiration of ninety days from the time when the goods were placed in his custody,

or, if the goods are of a perishable nature, at such earlier period as he in his discretion thinks fit, sell by public auction, either for home use or exportation, the said goods or so much thereof as may be necessary to satisfy the charges hereinafter mentioned.

74. Before making such sale the wharf or warehouse owner shall give notice thereof by advertisement in two newspapers circulating in the neighbourhood, or in one daily newspaper published in London and in one local newspaper, and also, if the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents which have come into the possession of the wharf or warehouse owner, or is otherwise known to him, give notice of the sale to the owner of the goods by letter sent by the post ; but the title of a *bona fide* purchaser of such goods shall not be invalidated by reason of the omission to send notice as hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

Notices of sale to be given.

75. In every case of any such sale as aforesaid the wharf or warehouse owner shall apply the monies received from the sale as follows, and in the following order :

Monies arising from sale, how to be applied.

1. If the goods are sold for home use in payment of any customs or excise duties owing in respect thereof :
2. In payment of the expenses of the sale :
3. In the absence of any agreement between the wharf or warehouse owner and the ship-

owner concerning the priority of their respective charges, in payment of the rent, rates, and other charges due to the wharf or warehouse owner in respect of the said goods:

4. In payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods :
5. But in case of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, then such charges shall have priority according to the terms of such agreement :

and the surplus, if any, shall be paid to the owner of the goods.

Warehouse
owners rent
and expen-
ses.

76. Whenever goods are placed in the custody of a wharf or warehouse owner under the authority of this Act, the said wharf or warehouse owner shall be entitled to rent in respect of the same, and shall also have power from time to time, at the expense of the owner of the goods, to do all such reasonable acts as in the judgment of the said wharf or warehouse owner are necessary for the proper custody and preservation of the said goods, and shall have a lien on the said goods for the said rent and expenses.

Warehouse
owners pro-
tection.

77. Nothing in this Act contained shall compel any wharf or warehouse owner to take charge of any goods which he would not be liable to take charge of if this Act had not passed ; nor shall he be bound to see to the validity of any lien claimed by any shipowner under this Act.

78. Nothing in this Act contained shall take away or abridge any powers given by any local Act to any harbour trust, body corporate, or persons whereby they are enabled to expedite the discharge of ships or the landing or delivery of goods; nor shall anything in this Act contained take away or diminish any rights or remedies given to any shipowner or wharf or warehouse owner by any local Act.

**Saving
powers
under local
Acts.**

C.

THE CUSTOMS LAWS CONSOLIDATION
ACT, 1876.

39 & 40 Vict. c. 36.

The whole of this statute is too long to be set out in full. The clauses, therefore, which bear upon the position of master of the ship and the importer and exporter of merchandise are set out in extenso, and of the others an abstract showing the nature and scope of the enactment in each case is given.

Clauses 1 to 10. Management, &c., of Customs.

Appointment of ports, &c.

11. Treasury may appoint ports and quays, and alter or vary the limits. Alterations or variations in limits not to affect rights (irrespective of Customs) co-extensive with pre-existing limits. Ports so appointed by Treasury warrant to be deemed ports for the purposes of 54 Geo. 3, c. 159.

12. Treasury may appoint warehousing ports or places, and warehouses, &c. Rent of goods in warehouses.

13. Warehouse-keeper to give general security.

14. Commissioners may appoint stations and sufferance wharves, &c. ; and regulate discharge of cargo and boarding of officers.

15. Power to revoke or alter former warrant or orders.

16. Commissioners may order in what ports goods may be carried or water-borne by authorised persons. Commissioners may require security.

Collection of duties, &c.

17. Duties, drawbacks, &c., to be under the management of the Commissioners of Customs. Duties and drawbacks to be in British currency, and according to imperial weight and measure.

18. When new duties of Customs are imposed former ones to continue until the new become chargeable, except in certain cases. Duties due before the passing of this Act to be levied as if payable by this Act.

19. Goods in warehouse, when entered for home consumption, to be chargeable with existing duties on like sort of goods.

20. When contracts have been entered into, amount of increased or decreased duty to be added or deducted.

21. All moneys, &c., received on account of Customs to be paid into the Bank of England.

22. The Treasury may make rules for keeping the accounts of the revenue of the Customs, and for appropriation thereof. Responsibility for money, &c.

23. Bank to keep an account, to be returned to the Customs, for inspection by the Accountant and Comptroller General. Any default to be reported to the Commissioners of Customs.

24. Bank of England not to dispose of money, &c., except for a specified purpose.

25. In London, debenture, &c., to be paid out of Commissioners' account ; at any other port, out of moneys in collector's hands. Limitation of time for return of duties overpaid extended to six years.

26. Commissioners of Customs may close accounts of collectors.

27. Customs duties, &c., payable to Exchequer account of Bank of England to be received under such regulations as the Treasury may prescribe.

28. Forgery declared felony.

29. Certain moneys, &c., deemed within meaning of 24 & 25 Vict. c. 96.

Disputes between importers and officers.

30. In case of dispute, importer to deposit the duty, &c., demanded. On payment of such deposit, &c., importer to have delivery.

31. Deposits to be carried to Consolidated Fund. If no action brought, deposit to be retained as duties. If action determined against the revenue, importer indemnified.

Complaints, &c.

32. Disputes and inquiries in London.

33. Appeal to open court. Commissioner to conduct public inquiry. Power to keep order.

34. Commissioners to prosecute or decide. Award may be enforced.

35. Disputes and inquiries at outports.

36. Inquiries may be conducted by Commissioners, &c. Oath may be administered. Persons making a false oath guilty of perjury.

37. Power to summon witnesses. Penalty.

38. Regulations for conduct of inquiries.

Importation and Warehousing.

39. Importation and prohibition.

40. Time of importation of goods and time of arrival of ships defined.

41. Importation direct.

42. Prohibitions and restrictions. Table of prohibitions and restrictions.

43. Arms, &c. may be prohibited.

44. List of prohibited books to be exposed at the Custom Houses.

45. Persons complaining of prohibition of books in copyright lists may appeal to a judge in chambers. Nothing to prevent persons aggrieved from proceeding at law, &c.

46. Vessels arriving to come quickly to place of unloading, and bring to at the stations for boarding officers. Accommodation of officers on board. Penalty, £20.

47. Officers to board ships. To have free access to all parts. May seal or secure goods and open locks. Goods concealed, forfeited. If seal, &c. broken, master to forfeit £100. Officers may put seals upon stores inwards. If such seals be broken, or the stores secretly conveyed away, master to forfeit £20.

48. Time and place of landing goods inwards.
Goods unshipped contrary to regulations forfeited.
Goods not forthwith removed and landed forfeited.

49. Account of bullion or coin to be delivered to the officers of Customs.

As to report of cargo.

Master to report with-
in 24 hours
after arrival,
according to
Form No. 1,
in Schedule
B.

50. The master of every ship, whether laden or in ballast, shall, within twenty-four hours after arrival from parts beyond the seas at any port in the United Kingdom, make due report of such ship to the collector or other proper officer in the form No. 1 in Schedule B. to this Act, and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct; and such report, except where otherwise specially allowed or provided for by their order or at ports where goods may be landed into transit sheds, shall be made before bulk be broken.

On failures
master to
forfeit £100.
Goods not
reported
may be
detained.

51. If such master shall fail to make due report, or if the particulars or any of them contained in such report be false, he shall forfeit the sum of one hundred pounds; and all goods not duly reported may be detained by any officer of Customs until so reported or the omission explained to the satisfaction of the Commissioners of Customs, and may in the meantime be removed to the Queen's warehouse.

52. Persons in charge of commissioned ships, British or foreign, having goods on board, to deliver

an account for forfeit £100. Such ships liable to search.

53. The master of every ship arriving from parts beyond the seas shall at the time of making report answer all such questions relating to the ship, cargo, crew, and voyage as shall be put to him by the collector or other proper officer ; and if he refuses to answer or does not answer truly, or if after the arrival within four leagues of the coast of the United Kingdom bulk shall be broken, or any alteration made in the stowage of the cargo of such ship so as to facilitate the unloading of any part of such cargo before report of such ship and cargo, or if any part be staved, destroyed, or thrown overboard, or any package be opened, unless cause be shown to the satisfaction of the Commissioners of Customs, in every such case the master shall forfeit the sum of one hundred pounds.

Master to answer questions.

Bulk not to be broken or stowage altered.

Penalty, £100

54. If the contents of any package intended for exportation in the same ship shall be reported by the master as being unknown to him, the officers of the Customs may open and examine such package on board such ship, or bring the same to the Queen's warehouse for that purpose ; and if there be found therein any goods which are prohibited to be imported such goods shall be forfeited, unless the Commissioners of Customs shall permit them to be exported.

Packages reported 'Contents unknown' may be opened and examined.

Prohibited goods forfeited.

As to the entry of dutiable goods for home use.

Entry for home use.

55. The importer of any goods liable to duties of Customs and intended to be delivered for home

Particulars of entry according to

Form No. 2.
in Schedule
B

use on the landing thereof from the importing ship, or his agent, shall before unshipment thereof make perfect entry of such goods by delivering to the collector or other proper officer an entry thereof in the form No. 2 in Schedule B. to this Act, and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct.

Payment of
duties.

56. The importer of any goods or his agent shall immediately upon the entry thereof by him for home use pay down any duties which may be payable thereon to the collector or other proper officer appointed to receive the same; and the entry, when signed by such collector or officer, shall be the warrant for the landing and delivery of such goods, and shall be transmitted to the proper officer of Customs for that purpose.

Warrant for
delivery.

*Entry for
warehousing*

As to the entry of goods intended to be warehoused without payment of duty on first entry thereof.

Particulars
of entry
according to
Form No. 3.
in Schedule
B.

57. The importer of any goods intended to be warehoused without payment of duty on the first entry thereof, or his agent, shall deliver to the collector or other officer authorised to receive the same a bill of entry in the form No. 3 in Schedule B. to this Act, and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct; and such bill of entry, when signed by such collector or officer, shall be transmitted to the proper officer of Customs, and be the warrant for

Warrant for
warehousing

the due warehousing of such goods ; and upon the entry of any warehoused goods for home consumption form No. 2 may be used, with the addition of the date of warehousing.

Entry for home consumption.

As to the entry of goods landed for examination by bill of sight and perfecting entry thereof.

Entry by bill of sight, &c.

58. The importer of any goods, or his agent, if unable for want of full information to make a perfect entry of such goods, on making and subscribing a declaration to that effect before the collector or other proper officer, may make an entry by bill of sight for the packages or parcels of such goods in the form No. 4 in Schedule B. to this Act, and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct.

Entry by bill of sight when goods not known.

Form No. 4.

59. Such entry being delivered to the collector or other proper officer, and signed by him, shall be the warrant for provisionally landing such goods to be examined by such importer in presence of the proper officers ; and the importer shall, within three days or such further time as the Commissioners of Customs shall see fit after the landing thereof and before the same shall be delivered, make full and perfect entry thereof by endorsing upon such bill of sight such particulars of such goods as are herein required on making perfect entry of goods, whether for payment of duty, or for warehousing, or for delivery free of duty, as the case may be,

Warrant for landing.

Before delivery, importer to make perfect entry

and to such endorsement he shall affix the date thereof, together with his signature and place of abode ; and such endorsement, when countersigned by the collector or other proper officer, shall be taken as the perfect entry for such goods.

Goods entered by bill of sight not to be delivered unless duty is paid or deposited.

60. Where an entry for the landing and examination of goods for delivery on payment of duty shall be made by bill of sight, such goods shall not be delivered until perfect entry thereof shall have been made and the duties due thereon paid, unless the importer or his agent shall have deposited with the proper officer of the Customs a sum of money sufficient in amount to cover the duties payable thereon ; and if the sum deposited on a bill of sight shall not be equal, in amount to the duties payable upon all the goods contained in any single package landed or examined thereby, no part shall be delivered until a perfect entry is made and the duties paid or deposited for the whole of the goods contained in such package.

Goods to be taken to Queen's warehouse in default of perfect entry and sold in default of such entry within one month after landing.

61. If full and perfect entry of any goods landed by bill of sight as aforesaid be not made within three days after the landing thereof, or within such further time as the Commissioners of Customs may see fit, such goods shall be taken to the Queen's warehouse by the officers of the Customs ; and if the importer shall not within one month after such landing make perfect entry of such goods, and pay the duties thereon or on such parts thereof as can be entered for home use, together with the charges of removal and of warehouse rent, such goods shall be sold for the payment of such duties and charges

(or for exportation if they be such as cannot be entered for home use or shall not be worth the duties), and the overplus, if any, after payment of such duties and charges, or the charges if sold for exportation, shall be paid to the importer or proprietor thereof: Provided always, that if any entry at any time made as and for a full and perfect entry for goods provisionally landed by bill of sight or deposited in the Queen's warehouse as aforesaid shall not be made in manner herein required for the due landing of the goods, the same shall be deemed to be goods landed without entry.

Entry not valid unless in manner required by law.

62. If after any goods shall have been duly entered and landed to be warehoused, though not actually deposited in the warehouse, the importer shall further duly enter the same or any part thereof for home use or exportation, the same may be delivered and taken for home use or exportation, as the case may be.

Goods entered for warehouse may upon further entry be delivered for home use or exportation.

Entry of British goods returned.

63. British goods returned to be deemed foreign.

As to the entry of goods free of duty.

64. The importer of any goods not subject to duties of Customs, or his agent, shall deliver to the collector or other proper officer an entry of such goods in the form No. 5 in Schedule B. to this Act, and containing the several particulars indicated in or required thereby, or in such other form or manner as the Commissioners of Customs may direct; and such entry, when signed by the collector

Particulars of entry according to Form No. 5. in Schedule B.

Warrant for delivery.

Account of
free goods.

or other proper officer, shall be transmitted to the examining officer, and be his warrant for the delivery of the goods mentioned therein, and if such entry shall be incorrect in any particular, the importer or his agent shall within fourteen days after the landing of the goods deliver to the proper officer of Customs a full and accurate account thereof.

Entries
generally.

As to entries of goods in any of the foregoing cases.

Bill of entry
to be in
duplicate.

65. Upon the entry of any goods, the importer, his agent, or the consignee of the ship, as the case may be, shall deliver two or more duplicates of the entry thereof, as the case may require, in which duplicates all sums and numbers may be expressed in figures ; and the number of duplicates shall be such as the collector or other proper officer may require ; and the importer or his agent shall produce to such officer, if required by him, the invoice, bills of lading, and other documents relating to the goods.

Goods concealed in
packages or
delivered
without entry,
forfeited

66. If any goods or other things shall be found concealed in any way or packed in any package or parcel to deceive the officers, such package or parcel, and all the contents thereof, shall be forfeited ; and if any goods be taken or delivered out of any ship or out of any warehous, not having been duly entered, the same shall be forfeited : Provided always, that no entry shall be required in respect of the baggage of passengers, which may be examined, landed, and delivered under such regulations as the Commissioners of Customs

Passengers'
baggage.

may direct, but if any prohibited or uncustomed goods shall be found concealed therein, either before or after landing, the same shall be forfeited, together with everything packed therewith.

67. Penalty on fraudulent import entries and concealments.

68. Surplus stores not excessive may be entered for private use or warehouse.

69. Agent to produce authority, if required.

70. Officers may take samples.

71. No entry, &c., valid unless in accordance with Acts.

72. Every importer, agent, or other person entering any goods who shall fail to comply with the foregoing regulations, so far as they are respectively applicable to the goods entered by him, shall forfeit a sum not exceeding twenty pounds, and such goods shall be liable to forfeiture.

Importer or agent failing to comply with regulations to forfeit £20.

As to the time within which goods shall be entered and landed after the arrival of the importing ship.

Entry, time for.

73. If the importer of any goods shall not, within fourteen days (exclusive of Sundays and holidays) after the arrival of the ship importing the same, make perfect entry or entry by bill of sight of such goods, or if, having made such entry, he shall not land such goods within such fourteen days or within such further period as the Commissioners of Customs shall direct, the officers of the Customs may convey such goods to the Queen's warehouse; and whenever the cargo of any ship shall have

Goods not entered within fourteen days may be conveyed to Queen's warehouse.

Small packages or quantities of goods may be deposited in Queen's warehouse.

If duties and charges on such goods be not paid within three months, the goods may be sold.

Lien for freight payable before delivery of goods from Queen's warehouse.

been discharged within such fourteen days with the exception only of a small quantity of goods, the officers of the Customs may forthwith deposit such remaining goods in the Queen's warehouse; and also at any time after the arrival of such ship may deposit any small packages or parcels of goods therefrom in the Queen's warehouse, there to remain for due entry during the remainder of such fourteen days, except as hereinafter mentioned; and if any goods so deposited in the Queen's warehouse being of a perishable nature shall not be cleared forthwith, or not being of a perishable nature shall not be cleared within three months after such deposit, or within such further period as the Commissioners may direct, and all charges of removal, freight, and warehouse rent be not paid, such goods may be sold, and the produce thereof paid in discharge of duties, freight, and charges, and the overplus, if any, to the proprietor of the goods on his application for the same; and in case such goods cannot be sold for a sufficient sum to pay the duties and charges, if ordered for sale for home consumption, or the charges if for exportation, the same may, by direction of the Commissioners of Customs, be destroyed; and any officer of Customs having the custody of any goods which shall have come to his hands under the Customs Acts, may refuse delivery thereof from the Queen's warehouse or other place of deposit until proof be given to his satisfaction that the freight due upon such goods has been paid: Provided that if the importing ship and goods be

liable to the performance of quarantine the time for entry and landing of such goods shall be computed from the time at which such ship and goods shall have been released from quarantine.

74. No goods of a combustible or inflammable nature shall be brought into or deposited in the Queen's warehouse unless with the sanction of the Commissioners of Customs; and if any such goods shall be landed by the officers of Customs under the provisions of the Customs Acts, the same may be deposited in any other available place that such officers may deem fit, and whilst so deposited the same shall be deemed to be in the Queen's warehouse, and be liable to be dealt with, at the expiration of fourteen days, in the same manner as goods of a perishable nature actually deposited in the Queen's warehouse, unless duly cleared or warehoused in some approved warehouse in the meantime; and such goods shall be chargeable with such expenses for securing, watching, and guarding the same until sold, cleared, or warehoused as aforesaid, as the Commissioners shall see fit, and neither the said Commissioners nor their officers shall be liable to make good any damage which such goods may sustain by reason or during the time of their being so deposited and dealt with as aforesaid.

Combustibles not to be deposited in Queen's warehouse.

75. Whenever any goods shall remain on board any importing ship beyond the period of fourteen days after the arrival of such ship, or beyond such further period as the Commissioners of Customs may allow, such ship shall be detained by the

If goods remain on board importing ship beyond fourteen days, such ship may be detained for expenses,

proper officer of Customs until all expenses of watching or guarding such goods beyond such fourteen days, or such further time, if any, allowed as aforesaid, not exceeding five shillings per diem, and of removing the goods, or any of them, to the Queen's warehouse, in case the officers shall so remove them, be paid, and the like charge per diem shall be made in respect of any derelict or other ship coming, driven, or brought into the United Kingdom under legal process, by stress of weather, or for safety, when it is necessary to station any officer of Customs in charge, either on board thereof or otherwise, for the protection of the revenue, so long as the officer shall so remain.

*Unshipping,
landing, and
examina-
tion.*

Unshipping,
carrying,
landing,
weighing,
&c., and de-
positing of
goods, to be
done at the
expense of
the importer.

Proper
officer of
Customs to
take account
of goods for
warehouse.
Contents of
packages to
be marked
thereon, and

As to the unshipping, landing, examination, warehousing, and custody of goods.

76. The unshipping, carrying, and landing of all goods, and bringing them to the proper place for examination and weighing, putting them into the scales, opening, unpacking, repacking, bulking, sorting, lotting, marking, and numbering, where such operations respectively are necessary or permitted, and removing to and placing them in the proper place of deposit until duly delivered, shall be performed by or at the expense of the importer.

77. Upon the entry and landing of any goods to be warehoused, or within such period as the Commissioners of Customs shall direct with respect to the same or any of them, the proper officer of Customs shall take a particular account of such goods at the quay or wharf at which they shall be

so landed, or in the warehouse of the port of arrival, if they be goods of which the account is permitted to be taken in the warehouse, or in the warehouse of any other port to which they may be consigned and allowed to be removed by the authority of the Lords Commissioners of the Treasury or the Commissioners of Customs, and shall cause to be marked on each package of which such account shall be taken the contents thereof, and shall enter in a book prepared for that purpose, containing the name of the import ship and of the person in whose name they are entered, the marks, numbers, and contents of each such package, the description of the goods, and the warehouse or place in the warehouse in which the same shall be deposited, and when the same shall have been so deposited with the authority of such officer, he shall certify that the entry and warehousing of such goods is complete, and such goods shall from that time be considered goods duly warehoused; and if any such goods shall be delivered, withheld, or removed from the proper place of examination before the same shall have been examined and certified by such officer, such goods shall be deemed to be goods not duly entered or warehoused, and shall be forfeited.

78. The account of the goods so taken as aforesaid shall be the account upon which the duties payable upon such goods shall be ascertained when the same shall ultimately come to be delivered upon due entry for that purpose, and the same shall be entered and the full duties due thereon be

entered in
landing book

Goods to be
entered and
duties ascer-
tained and
paid accord-
ing to land-
ing account.

paid according to the quantity taken in such account, without any abatement for any deficiency, except as hereinafter provided.

Warehoused goods to be deposited in original packages or those of which account is taken.

Goods altered or removed without sanction of officers, forfeited.

79. All goods warehoused shall be deposited in the packages in which the same shall have been imported, except such goods as are permitted to be skipped on the quay, or bulked, sorted, lotted, packed, or repacked in the warehouse after the landing thereof, in which case they shall be deposited in the packages in which the same shall be when the account thereof is taken by the proper officer ; and if such goods are not so deposited, or if any alteration shall afterwards be made in the goods or packages so deposited, or in the packing thereof in the warehouse, or in the marks and numbers of such packages, or if the same shall be removed from the room in the warehouse in which the same are deposited, without the presence and sanction of the proper officers, except for delivery under the proper warrant, order, or authority for that purpose such goods and packages shall be forfeited.

80. Commissioners to direct what goods may be bulked, sorted, packed, &c.

81. Warehouse-keeper neglecting to stow goods properly, to forfeit £5.

82. Warehouse-keeper neglecting to produce goods deposited when required, to forfeit £5.

83. Goods not duly warehoused, or fraudulently concealed or removed, forfeited.

84. Persons clandestinely opening warehouse, &c., to forfeit £100.

85. Who liable for goods taken out of warehouse without entry. Taking goods out of warehouse, &c. to be deemed a misdemeanor. Importer or consignee, if defrauded by officers, to be indemnified.

86. If goods be damaged by fire, &c., the importer not entitled to compensation.

87. Commissioners of Customs may remit duties on warehoused goods lost or destroyed.

Removal.

88. Goods may be removed from one warehousing port to another, or from one warehouse to another in the same port. Regulations for removal.

89. Officers at port of removal to transmit account of goods to officers at port of destination. Remover to give bond in the amount of duty. Bond may be given either at port of removal or port of destination. Bond how to be discharged. General removal bond may be given.

90. Goods, on arrival at the port of destination, to be subject to same regulations as goods on first importation.

91. On arrival of goods at port of destination they may, after formal re-warehousing, be entered for exportation or for home use on payment of duties.

92. Warehoused goods, if not cleared for home use or exportation within five years, must be re-warehoused. Duties on deficiencies and expense of examination to be paid down.

93. Goods in warehouse not cleared or re-ware-

housed, or duties paid on deficiencies after five years, to be sold. Proceeds of sale how to be applied. Goods not worth the duty may be exported or destroyed.

94. Tobacco abandoned as not worth the duty to be destroyed.

95. Goods in warehouse may be sorted, repacked, &c. To be repacked in the original or other legal sized packages. Wine or spirits may be bottled for exportation only, and wine may be fortified, filled up, or racked off. Wines may be mixed, and samples taken. After repacking, damaged parts may be destroyed.

96. Goods in warehouses may be taken out under certain regulations and with security for duties.

As to the entry of warehoused goods for home consumption and exportation, and the delivery thereof.

Entry for exportation or home use.

97. No warehoused goods shall be taken or delivered from the warehouse, except upon due entry and under the care of the proper officers, for exportation, or upon due entry and payment of the full duties payable thereon for home use, except goods duly delivered to be shipped as stores, in such quantities as the collector or other proper officer shall allow, and subject to such directions and regulations as the Commissioners of Customs may see fit.

Persons entering warehoused goods for home use to

98. Upon the entry of any goods to be cleared from the warehouse for home use, the person entering such goods shall deliver a bill of entry,

and duplicates thereof, in like manner and form, containing the same particulars as are hereinbefore required on the entry of goods to be delivered for home use on the landing thereof, as far as the same may be applicable, and shall at the same time pay down to the proper officer of the Customs the full duties payable thereon, not being less in amount than according to the account of the quantity taken by the proper officer on the first entry and landing thereof, except as to the following goods, viz., tobacco, wine, spirits, figs, currants, and raisins, the duties whereon, when cleared from the warehouse for home use, shall be chargeable upon the quantity of such goods, ascertained by weight, measure, or strength at the time of actual delivery thereof, unless there is reasonable ground to suppose that any portion of the deficiency or difference between the weight, measure, or strength ascertained on landing and first examination of any such last-mentioned goods and that ascertained at the time of actual delivery has been caused by illegal or improper means, in which case the proper officer of Customs shall make such allowance only for loss as he may consider fairly to have arisen from natural evaporation or other legitimate cause.

deliver bill of entry and pay down duties.

Duties to be paid according to landing account, except in certain cases

Duties on certain goods to be chargeable on ascertained quantity on delivery, unless deficiency has been caused by improper means.

99. No duty shall be charged in respect of any deficiency in goods entered and cleared from the warehouse for exportation unless the officers of Customs have reasonable ground to suppose that such deficiency, or any part thereof, has arisen from illegal abstraction.

Deficiencies in goods entered for exportation not to be charged with duty unless fraudulent.

AS TO THE EXPORTATION, ENTRY, AND CLEARANCE
OF SHIPS TO PARTS BEYOND THE SEAS.

Warehoused
goods not to
be exported
in ship of less
than forty
tons burden.

100. No person shall export any warehoused goods, or goods liable to duties of Customs transhipped, or goods entitled to drawback on exportation, nor shall enter any such goods for exportation from the United Kingdom to parts beyond the seas, in any ship of less burden than forty tons.

Master of
vessels out-
wards to
deliver cer-
tificate of
clearance of
last voyage,
and to make
entry out-
wards.

101. The master of every ship in which any goods are to be exported from the United Kingdom to parts beyond the seas, or his agent, shall, before any goods be taken on board, except as is hereafter provided, deliver to the collector a certificate from the proper officer of the due clearance inwards or coastwise of such ship of her last voyage, and shall also deliver therewith an entry outwards of such ship, verified by his signature in the form No. 6 in Schedule B. to this Act, and containing the several particulars indicated in or required thereby, or in such other form or manner as the Commissioners of Customs may direct ; and if such ship shall have commenced her lading at some other port, the master shall deliver to the proper officer the clearance of such goods from such other port ; and if any goods be taken on board any ship at any port before she shall have entered outwards at such port (unless a stiffening order, when necessary, shall be issued by the proper officer to lade any heavy goods for exportation on board such ship), the master shall forfeit the sum of one hundred pounds ; provided that on

Form No. 6

Penalty, £100
Shipment of
goods for
exportation.

the arrival at any port in the United Kingdom of any ship about to deliver her cargo at more than one port in the United Kingdom, it shall be lawful, subject to such regulations as the Commissioners of Customs may deem necessary, to allow the entry outwards of such ship, and to permit the shipment of goods, other than spirits or tobacco, for exportation in such ship to the foreign destination for which such ship shall be entered outwards, before the whole of the goods imported in such ship shall have been discharged therefrom, the complete separation of such goods from the inward cargo being effected to the satisfaction of the collector or other proper officer of the port: Provided also, that on any ship commencing to load goods for exportation to parts beyond the seas not having on board any drawback or other goods liable to duties of customs or excise, and about to proceed to any other port in the United Kingdom to complete her loading, it shall be lawful, subject to such regulations as the Commissioners of Customs may deem necessary, to permit such ship, notwithstanding any provisions to the contrary, to convey goods not entitled to drawback or liable to duties of customs or excise from the port at which such ship shall commence loading to any other port or ports in the United Kingdom for delivery there, the complete separation of such goods from the cargo to be exported to be effected to the satisfaction of the collector or other proper officer at the port of shipment.

102. No warehoused or drawback goods shall be

Goods not to
be shipped

except on proper days and places, nor until entry and clearance.

Officers may open packages and examine goods.

British and Irish spirits in nine-gallon casks.

On entry outwards, bond for due shipping and landing shall be given.

shipped, put off, or water-borne to be shipped for exportation from any port or place in the United Kingdom on Sundays or public holidays, except by special permission of the Commissioners of Customs, nor from any place not being a legal quay, wharf, or other place duly appointed for such purpose, nor without the presence or authority of the proper officer of Customs, nor before due entry outwards of such ship and due entry of such goods, nor before due clearance thereof for shipment ; and any such goods shipped, put off, or water-borne to be shipped contrary hereto shall be forfeited ; and it shall be lawful for such officers to open and examine all goods shipped or brought for shipment at any place in the United Kingdom, and the opening for that purpose of packages containing such goods, and the weighing, repacking, landing (when waterborne), and the shipping thereof shall be done by or at the expense of the exporter.

103. If any British or Irish spirits shall be exported from Great Britain or Ireland to parts beyond the seas, or be removed to the Isle of Man, or be brought to Great Britain or Ireland, or to any wharf, quay, or other place, or water-borne for that purpose, in casks containing less than nine gallons each of such spirits, the same shall be liable to forfeiture.

As to the entry and clearance of goods for exportation.

104. Before any warehoused goods, British-wrought plate, or goods entitled to any drawback of Customs on exportation, or exportable only

under particular rules, regulations, or restrictions, shall be permitted to be exported, the exporter or his agent shall deliver to the collector or other proper officer a bond note or account of such goods, and give such security by bond as the Commissioners of Customs shall require, that such goods shall be duly shipped and exported, and shall be landed at the place for which they are entered outwards, within such time as the Commissioners may deem reasonable, or be otherwise accounted for to their satisfaction; and such bond note, when certified by the proper officer, shall be the export entry for the goods enumerated therein, provided that any person desirous of exporting any such goods may, at his option, but subject to such regulations as the Commissioners of Customs may direct, give a general bond, with such security, in such amount, and under such conditions as the said Commissioners may require, in lieu of separate bond for each exportation, first delivering in each case to the proper officer a notice, in such form as the said Commissioners shall prescribe, containing an account of the particular goods to be exported by him under such general bond in any particular ship; but no such notice, if it relate to goods other than spirits, shall be received and acted upon unless there be attached thereto an adhesive stamp equal in amount or value to the duty which would be payable under any Act relating to stamp duties upon a separate bond, if given for the exportation of the goods contained in such notice.

General
bond for ex-
portation
may be
given

Notice in
each case to
be given.

Stamp duty
on notice
equivalent
to duty on
separate
bond.

105. Before any goods upon which any draw-

Exporter to

deliver shipping bill according to Form No. 7. in Schedule B.

back of Customs on exportation shall be claimed shall be shipped or water-borne to be shipped for exportation, the exporter or his agent shall deliver to the proper officer of Customs a shipping bill, with claim and declaration at the foot thereof, in the form No. 7 in Schedule B. to this Act, and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct.

Drawback goods not agreeing with shipping bill forfeited.

106. If any goods upon which any drawback shall be claimed or allowed be shipped or brought to any quay, wharf, or other place to be shipped for exportation, shall, on examination by the proper officers of Customs, be found not to agree with the entry in the shipping bill or other proper document for allowance of drawback on shipment, or shall be found to be of less value for home use than the amount of the drawback claimed, all such goods, and the package containing the same, with all other the contents therein, shall be forfeited; and the person entering such goods, and claiming the drawback thereon, shall in any and every such case forfeit one hundred pounds, or treble the amount of the drawback claimed, at the election of the Commissioners of Customs.

Penalty for claiming more drawback than is due.

Inland revenue drawback.

107. No drawback of excise shall be allowed upon any goods cleared for exportation, unless the person intending to claim such drawback shall have given due notice to the officer of excise, and shall have produced to the proper officer of Customs, at the time of clearing such goods, a proper document under the hand of the officer of excise, containing

Notice to officer.

Shipment to be certified.

the description of such goods ; and if such goods be found to correspond with the particulars of the goods contained in such document, and be duly shipped and exported, the proper officer of Customs shall, if required, certify such shipment upon such document, and shall transmit the same to the officer of excise.

108. No drawback shall be allowed on any tobacco not wholly manufactured from tobacco on which duty on importation shall have been paid, nor on any tobacco mixed with dirt, rubbish, or other substance, except as provided by the Manufactured Tobacco Act, 1863; and every person who shall enter or ship, or cause to be entered or shipped, any tobacco contrary hereto, shall, over and above all other penalties which he may thereby incur, forfeit treble the amount of the drawback sought to be obtained, or two hundred pounds, at the election of the Commissioners of Customs, and all such tobacco and other substances shall be forfeited.

No drawback on tobacco not properly manufactured, and penalty for fraudulent attempts to obtain drawbacks.

109. The provisions of the Customs Act with reference to the exportation of warehoused goods, so far as they are applicable, shall be deemed to apply to and include goods liable to duties of Customs transhipped, and goods exported on drawback.

Provisions as to exportation applicable to transshipment and drawback goods.

110. The exporter of goods for which no bond is required shall (except as hereinafter provided), within six days after the final clearance outwards of the exporting ship, or within such other period as the Commissioners of Customs may direct,

Specifications for free goods six days after clearance.

Forms Nos.
8 and 9.

either by himself or his agent, deliver to the proper officer of Customs at the port of shipment a specification in the form No. 8 or No. 9 in Schedule B. to this Act, according to the nature of the goods, and containing the several particulars indicated in or required thereby, or in such other form and manner as the Commissioners of Customs may direct, and shall subscribe the declaration at the foot thereof, and on the demand of the proper officer of Customs shall produce the invoice bills of lading and other documents relating to the goods to test the accuracy of such specification ; and on failure to comply with any of the foregoing requirements, the exporter or agent shall for every such offence forfeit five pounds : Provided always, that no salmon shall be shipped to be exported without previous entry thereof and due compliance with the provisions of the Salmon Fishery Acts for the time being in relation thereto.

Except as
to salmon.

Master or
owner to
deliver mani-
fest of goods
shipped.

111. The master or owner of every ship in which any goods shall be exported shall, by himself or his agent, within six days after the final clearance of such ship, deliver to the proper officer of Customs a certificate, if the ship be a steamer trading to a foreign port, of the quantity of coals or fuel shipped for use on the voyage, and a manifest of all the goods shipped, containing the marks and numbers and the number and description of the packages, with the names of the consignors thereof according to the bills of lading relating thereto, and shall make and subscribe a declaration that such manifest contains a true account of all the

cargo of such ship, unless a specification comprising all the particulars hereinbefore required to be given be delivered to the proper officer of Customs, with a like declaration that the same contains a true account of the whole cargo of the ship ; and the master, owner, or agent acting herein and subscribing the declaration, on failure to comply with any of the foregoing requirements relating to the delivery and verification of any specification or manifest, or otherwise incident thereto, shall for every such offence forfeit five pounds.

112. If any exporter of goods who shall have delivered a specification thereof for exportation in any ship shall fail, in case such goods or any of them shall not be duly shipped, to attend the proper officer of Customs, within six days after the final clearance outwards of such ship, either by himself or his agent, and correct such specification, he shall forfeit five pounds.

Goods not
exported as,
per specifica-
tions to be
notified to
proper
officer.

113. The shipping bill or bills, when filled up and signed by the exporter or his agent or the consignee of the ship, as the case may be, in such manner as the export officer may require, and countersigned by him, shall be the clearance for all the goods enumerated therein ; and if any of such goods shall consist of transshipment goods, the exporter or his agent shall, under a penalty of forty shillings, furnish to the export officer an accurate account thereof, with the marks, numbers, and description of the packages, and the contents thereof, which, when certified by the export officer, shall accompany the ship ; and if the exporter or

Shipping bill
signed by ex-
port officer
to be the
clearance for
the goods.

his agent shall require a similar certificate in respect of any goods shipped for exportation the export officer shall, on its being presented to him for that purpose, certify the same.

Licensed
lighterman
to carry
goods.

114. If any goods cleared for drawback or from the warehouse shall be carried or water-borne to be put on board any ship for exportation by any person not at the time duly licensed and authorised to act as a licensed lighterman, either in the port of London or any other port at which lightermen are required to be so licensed, or by any person not being in the employ of such lighterman at the time duly authorised to act as such, every such person shall for every such offence forfeit the sum of twenty pounds.

Warehoused
goods re-
moved or
shipped for
exportation
without
authority,
forfeited.

115. If any goods taken from the warehouse for removal or for exportation shall be removed or shipped, except with the authority or under the care of the proper officer of Customs, and in such manner, by such persons, within such time, and by such roads or ways as such officer shall permit or direct, such goods shall be forfeited; and if any such goods shall be illegally removed or carried away from any carriage, cart, boat, lighter, quay, wharf or other place prior to the shipment thereof on board the exporting or removing vessel, or from any ship, cart, or carriage in or on which the same shall have been shipped or laden, the bond given in respect thereof shall be forfeited, and may forthwith be put in suit for the penalty thereof, although the time prescribed in such bond for the landing or removal and re-warehousing of

such goods at the place of destination shall not have expired.

116. If any goods duly entered for delivery from the warehouse for removal or exportation shall be lost or destroyed by unavoidable accident, either in the delivery from the warehouse or the shipping thereof, the Commissioners of Customs may remit the duties thereon.

Commissioners may remit duty on warehouse goods lost or destroyed during delivery or shipment.

As to debentures for drawback on goods exported.

117. Debenture for drawback.

118. Declaration as to exportation and right to drawback. Name of person entitled to be declared.

119. Payment within two years.

120. Warehouse or debenture goods not duly exported.

121. Wine allowed for officers in the navy.

122. On officers leaving the service, &c., wine transferable to others.

123. Paymasters of Her Majesty's ships may ship tobacco for crew free of duty.

124. Paymaster removed from one ship to another may tranship tobacco with permission.

125. Limiting the quantity of tobacco.

As to the shipment of stores.

126. Victualling bill for stores. Stores illegally relanded, forfeited, and penalty £100.

As to clearance outwards.

127. If inward cargo reported for exportation, copy of report thereof to be delivered to the searcher.

128. Before clearance, certificates to be delivered to the proper officer. Content in Form No. 10 in Schedule (B).

129. Additional content for goods shipped at other ports.

130. Short shipment of goods to be notified to proper officer. Goods unshipped. Penalty.

131. Goods shipped contrary to provisions forfeited.

132. Penalty on departing without being cleared.

133. In ballast. Master to answer questions. Ships carrying passengers, or chalk or slate in ballast.

Boarding of ships.

134. Officer may board ship after clearance.

135. If officers put seals upon stores from the warehouse outwards, and such seals be broken, master to forfeit £20.

136. Ships not bringing to at stations, penalty £20. Carrying away officers, penalty £100.

137. Time of exportation and departure defined.

138. Goods prohibited by proclamation.

139. In case of public emergency, &c., pre-entry of export or coastwise goods may be required.

COASTING TRADE.

140. All trade by sea from one part of the United Kingdom to another to be deemed coastwise, and no part to be deemed beyond the sea.

141. Foreign ships in coasting trade subject to same rules as British ships. Foreign ships employed

in the coasting trade not to be subject to higher rates than British ships.

142. Coasting ship confined to coasting voyage.

143. Times and places for landing and shipping.

144. Master of coasting vessel to keep a cargo-book. Penalty for false entries in such book.

145. Account previous to departure to be delivered to collector in the form No. 11 in Schedule (B). Commissioners may grant general transires.

146. Transire to be delivered in 24 hours after arrival. Inland Revenue goods. Goods from the Isle of Man. Penalty for illegal unloading. Forfeiture of goods.

147. Officer may go on board and examine any coasting ship.

148. Goods brought coastwise may be entered outwards without landing.

BRITISH POSSESSIONS.

149. Powers of Commissioners of Customs as to colonies extended to governors, &c.

150. Base coin prohibited to be imported into British possessions.

151. Customs Acts to extend to British possessions abroad, except where otherwise provided for.

152. Foreign reprints of books under copyright prohibited.

153. Foreign manufactures with British marks.

154. Ship and cargo to be reported on arrival. Particulars of report. Penalty for false report.

155. Entry of goods to be laden or unladen. Regulations inwards and outwards and coastwise.

156. Goods grown or manufactured in Channel Islands duty free. Master to deliver certificate of produce.

157. Prohibited goods not to be shipped from the Channel Islands to the United Kingdom.

158. Ships not to sail from Channel Islands without clearance. Penalty.

159. Stores for vessels departing from the Channel Islands.

160. Application of penalties. Reward to officers for seizures in Channel Islands.

161. Colonial laws repugnant to Acts of Parliament void.

162. As to importing and exporting spirits into and from Channel Islands in ships of 40 tons and upwards. Not to extend to spirits in glass bottles, stores, certain warehoused goods, nor to licensed boats supplying Sark.

163. Provision as to importation of tobacco, &c. into Channel Islands.

164. Malta deemed to be in Europe.

Appendix.

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SCHEDULE (B.) referred to in the foregoing Act. SCHEDULE B

Form No. 1.

Official Number.
Number of Register.
Date of Registry.
{ If Sailing Vessel
or Steamer.

Port of

REPORT.

Ship's Name	Tonnage	British or Foreign ; if British, Port of Registry ; if Foreign, Country to which she belongs	Number of Crew British Seamen Foreign Seamen	Name of Master, and whether a British or Foreign subject	Port or Place from whence arrived
<i>Here state the particulars according to the above headings.</i>					
		Total			

CARGO.

1 Name or Names of Places where laden in order of Time	2 Marks	3 Nos.	4 Packages & Descriptions of Goods, Particulars of Goods stowed loose, & General Denomination of Contents of each Package of Tobacco, Cigars, or Snuff intended to be imported at this Port	5 Particulars of Packages and Goods (if any) for any other Port in the United Kingdom	6 Goods (if any) to be transhipped or to remain on board for Exportation.	7 Name of Consignee
<i>Here state the particulars according to the above headings, or if in Ballast, state 'in Ballast only.'</i>						
If any wreck fallen in with or picked up, to be stated						

STORES.

SCHEDULE B

Surplus stores remaining on board, viz. :—{

Number of alien passengers (if any)

Pilot's names.....

At what station ship lying

Agent's name and address

I declare that the above is a just report of my ship and of her lading, and that the particulars therein inserted are true to the best of my knowledge, and that I have not broken bulk or delivered any goods out of my said ship since her departure from the last foreign place of loading, (except, if so, at , stating where).

(Signed)

Master.

Signed and declared this day of 188 .

In presence of

Collector.

Form No. 2.

ENTRY FOR HOME USE.

Whether Prime or Post, and if Post date of Prime Entry.....

Port of Importation

Dock or Station.....Merchant in whose
name the goods
are entered..... }

Importer's Name

Ship's Name	Date of Report	Master's Name	Port or Place from whence
<i>Here state the particulars according to the above headings.</i>			

SCHEDULE B

Marks	Numbers	Number of Packages, quantity and description and, if a Prime Entry, value of Goods, in accordance with the requirements of the Official Import List
<i>Here state the particulars of the goods according to the above headings.</i>		

Total amount of duty payable on this entry ... £

Dated this day of 188 .

(Signed)

Importer or his Agent.

Form No. 3.

ENTRY FOR WAREHOUSING.

Port

Dock or Station.....

Importer's Name

Ship's Name	Date of Report	Master's Name	Port or Place from whence
<i>Here state the particulars according to the above headings.</i>			

Marks	Numbers	Number of Packages, quantity, description, and value of Goods in accordance with the requirements of the Official Import List
<i>Here state the particulars of the goods according to the above headings.</i>		

I enter the above goods to be warehoused at.....

Dated this day of 188 .

(Signed)

Importer or his Agent.

SCHEDULE B Form No. 4.

ENTRY BY BILL OF SIGHT.

Port

Dock or Station.....

Importer's Name

Ship's Name	Date of Report	Master's Name	Port or Place from whence

Marks	Numbers	Number of Packages with the best Description the Importer is able to give

*State the particulars according to the respective headings given
above.*

--	--

I, _____ the importer (or agent to the importer) of the goods above mentioned, do hereby declare (if importer) that I have not, or (if agent) that, to the best of my knowledge, he has not received sufficient invoice, bill of lading, or oaher advice from whence the quality, quantity, or value of the goods above mentioned can be ascertained.

Dated this _____ day of _____ 188 .

(Signed)

Importer or his Agent.

(Signed)

Collector or proper Officer of Customs.

Appendix.

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Form No. 5.

ENTRY FOR FREE GOODS.

SCHEDULE B

Port

Dock or Station.....

Importer's Name

Ship's Name	Date of Report	Master's Name	Port or Place from whence
<i>Here insert the particulars according to the above headings.</i>			

Marks	Numbers	Number of Packages, and quantity, description, and value of Goods, in accordance with the requirements of the Official Import List
<i>Here state the particulars of the goods according to the above headings.</i>		

I enter the above goods as free of duty, and declare the above particulars to be true.

Dated this day of 188 .

(Signed)

Importer or his Agent.

SCHEDULE B Form No. 6.

ENTRY OUTWARDS.

Port of

Ship's Name		Tonnage	Master's Name	Port of Destination
If British, Name of Port of her Registry.	If Foreign, Name of Country to which she belongs			

Lying at

Dock or Station.

(Signed)

Master or Agent.

Date of Entry.

If ship shall have commenced her
 lading at any other port, }
 (name of such port).

Form No. 7.

SHIPPING BILL.—For Drawback Goods.

Ship's Name	Whether British or Foreign ; if Foreign, the Country	Master's Name.	Port or Place of Destination.

Marks	Number	Description of Packages	Quantity, Quality, and Value, and Description of Goods
	Total Number of Packages		

I claim drawback on { Here state the quantity and description in words at length of any goods in respect of which drawback is claimed.

(Signed)

adding "exporter" or "agent" as the case may be.
 Station of Clearance.

(Countersigned)

Dated this

day of

188 .

Searcher

Appendix.

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Form No. 8.

SCHEDULE B

SPECIFICATION for Foreign Goods free of duty or on which all duties have been paid.

Port of Ship's Name			Master Port or Place of Destination	
Marks	Numbers	Description of Packages	Quantity and description of Foreign goods in accordance with the requirements of the Official Import List	Value

I declare that the particulars set forth above are correctly stated.

(Signed)

adding "exporter" or "agent" as the case may be.

Address

Dated

188 .

(Countersigned)

Form No. 9.

SPECIFICATION for British and Irish Goods only.

Port of Ship's Name			Master Port or Place of Destination	
Marks	Numbers	Description of Packages	Quantity & description of British & Irish goods, in accordance with the requirements of the Official Export List	Value

I declare that the particulars set forth above are correctly stated.

(Signed)

adding "exporter" or "agent," as the case may be.

Address

Dated

188 .

(Countersigned)

Searcher or proper Officer.

D.

FORM OF BILL OF LADING.

SHIPPED in good order and condition by
 on board the Steamship _____ whereof is Master for
 this present voyage _____ lying in the port of _____ and
 bound for _____ via _____ with liberty to call at
 any port or ports in any order for the purpose of receiving and
 delivering coals, cargo, or passengers, or for any other purpose
 whatever, to sail with or without Pilots and to tow and assist
 vessels in all situations,

(Description of merchandise.)

being marked and numbered as per margin ; and to be delivered
 subject to the exceptions and conditions hereinafter mentioned
 in the like good order and condition from the ship's tackles
 (where the ship's responsibility shall cease) at the aforesaid Port
 of _____ or as near thereto as she may safely get unto

(Name of consignee.)

or to his or their assigns. Freight for the said goods and
 primage (if any) to be paid by

General average payable as per (York/Antwerp) rules.

The following are the exceptions and conditions above
 referred to.

(Here follow the exceptions and conditions.)

NOTICE.—In tendering or accepting this Bill of Lading the
 shipper or other agent of the owner of the property
 carried, expressly accepts and agrees, on his own behalf,
 and on behalf of the owner of the goods to all its stipu-
 lations, exceptions and conditions, whether written or
 printed.

Marks _____ *In Witness whereof*, the Master or Agent of
 the said Ship has signed _____ Bills of Lading,
 Freight _____ exclusive of the master's copy all of this tenor
 at per ton _____ and date, one of which being accomplished
 £ _____ the others to stand void.

Primage £ _____ Dated in
 £ _____

Forms of Clauses, Exceptions, and Stipulations often inserted in Bills of Lading by different Shipping Companies, and in particular trades.

CLAUSES AS TO FREIGHT, LIEN, ETC.

1. Freight for the said goods and primage together to be paid by the shippers in (*port of loading*) in cash, without discount, ship lost or not lost.
2. Freight for the said goods and primage (if any) to be paid by the consignee in cash, as per margin, without deduction, in (*the port of destination*).
3. [Where there is a charter-party.] He or they paying freight for the same goods, and all other conditions or demurrage (if any should be incurred) for the said goods as per [the aforesaid] charter-party.

CONDITION AS TO WEIGHT AND CONTENTS.

1. Weight, measure, and contents unknown.
2. Weight, measure, quality, contents and value unknown; and neither the shipowner nor the person signing this bill of lading to be accountable for the same.

EXCEPTED PERILS.

1. The Act of God, the Queen's enemies, pirates, robbers by land or sea (but not pilferage) restraint of

princes, rulers or people, fire, jettison, barratry, the neglect and default of pilot, master, or crew, either in the navigation or otherwise howsoever, and all and every the dangers and accidents of the seas, rivers and navigation of whatever nature or kind, are excepted.

LEAKAGE, BREAKAGE, &c.

1. The ship is not liable for leakage, breakage, loss or damage by heat, sweat, rust, or decay, unless occasioned by improper stowage.

2. The ship is not liable for leakage or breakage, however caused, or for loss or damage by dust from coaling on the voyage, rust, sweat, decay, or for insufficient packing or reasonable wear and tear of packages, or inaccuracies, obliterations or absence of marks, numbers, address or description of goods shipped.

GENERAL CLAUSE EMBRACING ALL EXCEPTED PERILS.

The shipowner is not liable for detention, damage, loss, or injury arising from the act of God; enemies, pirates, robbers by land or sea, restraint of princes, rulers, or people; accidents to or from hull, machinery, boilers, steam pumps, or pipes of any kind (including all consequences of defect therein or damage thereto or thereby), explosion, heat, or fire on board, in hulk or craft, or on shore, at any time or in any place; jettison, barratry, theft on land or afloat, vermin, insufficiency of package in size, strength or otherwise, leakage, breakage, wastage, chafage, rain, spray, rust,

frost, thaw, decay, dust from coaling, hook marks, or injury from hooks, sweating, contact with, or smell or evaporation from any other goods ; effect of climate or heat of holds, inaccuracies in, obliteration, insufficiency or absence of marks, counter marks, numbers, or addresses, or description of goods shipped ; injury to or soiling of wrappers or packages ; lightering to or from the vessel ; cross river lightering ; storage, afloat or ashore ; transshipment, collisions, stranding, straining, heeling over, submerging, or sinking of, or admission of water to ship, in harbour, river, or at sea, all and every the dangers and accidents of the seas, rivers, and canals, and of navigation, or land transit of whatever nature or kind, and whether the perils or things above mentioned arise from the negligence, default, or error in judgment of the pilots, masters, mariners, engineers, stevedores, servants, or agents of the shipowners, or other persons, for whose conduct the shipowner would otherwise be liable.

FINES AND EXPENSES.

Fines and expenses and losses by detention of ship or cargo caused by incorrect marking or by incomplete or incorrect description of contents or weight, or of any other particulars required by the authorities at the port of destination, upon either the packages or bills of lading shall be borne by the owners of the goods.

GOLD, PRECIOUS STONES, &C.

1. The shipowners will not be accountable for gold, silver, bullion, specie, jewellery, precious stones, or precious metals, unless bills of lading are signed for such goods, and the value declared therein.

2. The shipowner is not accountable for any goods of whatever description which are above the value of £100 per package, unless the value be herein expressed, and extra freight, as may be agreed on, paid; nor for money, gold, silver, bullion, specie, precious metals, manufactured or unmanufactured, plated articles, glass, china, jewellery, and articles used for jewellery, valuable and precious stones, watches, clocks, timepieces, mosaics, bills, bank notes of any country, orders, notes, or securities for payment of any money, stamps, maps, title-deeds, or other documents of any nature whatsoever; paintings, pictures, or statuary, quinine, silk, laces, furs, or cashmere manufactured or unmanufactured, made up into clothes or otherwise, unless bills of lading are signed therefor, with the value thereof, therein expressed, and extra freight as may be agreed upon, be paid.

DANGEROUS GOODS.

If goods of a dangerous nature (medicinal fluids, &c.) are shipped without being previously arranged for, they are liable to be thrown overboard, and their loss, as well as any loss or damage to the ship or cargo, will fall upon the shippers or owners of such goods.

DELIVERY AND WAREHOUSING.

1. *General Clause.*—The master is to deliver the goods with all reasonable despatch; and the con-

signees are to be ready to receive them within 48 hours after the ship commences to unload, otherwise the master or agent may discharge and store them at the expense and risk of the owners of the goods.

2. *Where the Vessel is Inward Bound.*—Should the goods not be taken delivery of by the consignees or assigns so soon as the steamship is ready to discharge, they will be landed and warehoused at the port of destination at the risk and expense of the owner of the goods, and the ship has the option of discharging into lighters in the river at the risk and expense of the owners of the goods.

3. *Where the Vessel is Outward Bound.*—The goods are to be discharged from the ship as soon as public intimation is given that she is ready to unload, and if not thereupon removed without delay by the consignee, the master or agent is to be at liberty to land the same, or if necessary to discharge into hulk, lazaretto, or hired lighters, at the risk and expense of the owners of the goods.

LIEN.

1. The master or agent shall have a lien on the goods for payments made, unpaid freights, or liabilities incurred in respect of any charges stipulated herein to be borne by the owners of the goods.

2. *Where there is a Charter-Party.*—The master to have a lien for all unpaid freights whether due under this bill of lading or under the charter-party, and for all demurrage whether incurred at the port of loading or the port of discharge, and for all other charges for which a lien is given by the charter-party.

TRANSHIPMENT CLAUSE.

The shipowner has liberty to ship or tranship the goods by any other vessel, and in the event of the steamer putting back or into any port or otherwise being prevented from any cause from commencing or proceeding in the ordinary course of her voyage, to proceed under sail or in tow of any other vessel or in any other manner which the shipowner shall think fit.

INCORRECT DELIVERY—MISSING GOODS.

The shipowner shall not be liable for incorrect delivery unless each package shall have been distinctly marked by the shippers before shipment with the name of the port of destination.

In case any part of the within goods cannot be found during the ship's stay at the port of destination, they are when found to be sent back by first steamer at the risk and expense of the owner of this steamer, who shall also pay any compensation for loss of market which can be established to his satisfaction.

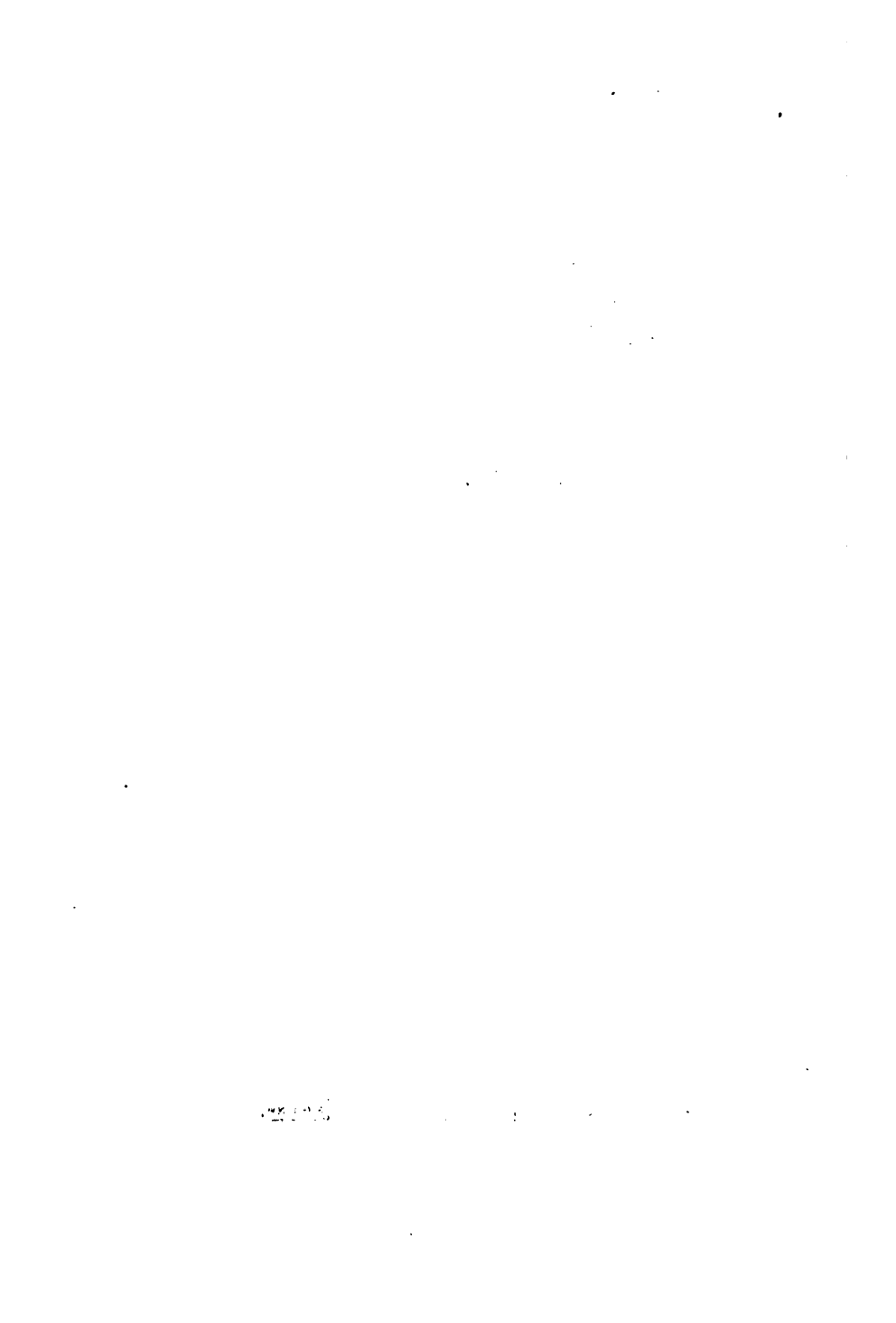
BLOCKADE, ETC.

In case of the blockade or interdict of the port of discharge, or if the entering of or discharging in the port of discharge shall be considered by the master unsafe by reason of war or disturbances, the master may land the goods at the nearest safe or convenient port, at the expense and risk of the owners of the goods; and the ship's responsibility shall cease as soon as the goods are so discharged into [proper and safe keeping, and a letter has been put into the Post

Office addressed to the shipper or consignee if named, stating the landing and with whom deposited.

QUARANTINE.

In case of quarantine the goods may be discharged into quarantine depôt, hulk, or other vessel as required for the ship's despatch. Quarantine expenses upon the goods of whatever nature or kind shall be borne by the owners of the goods.



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